

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 3069

By: Dorman

4  
5  
6 AS INTRODUCED

7 An Act relating to revenue and taxation; amending 68  
8 O.S. 2011, Section 3603, which relates to the  
9 Oklahoma Quality Jobs Program Act; modifying  
10 definition; providing for eligibility of  
11 remanufacturing; amending 68 O.S. 2011, Sections 1357  
12 and 1359, which relate to sales tax transactions;  
13 modifying references; providing an effective date;  
14 and declaring an emergency.

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

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

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

20 1. a. "Basic industry" means:

- 21 (1) those manufacturing activities defined or  
22 classified in the NAICS Manual under Industry  
23 Sector Nos. 31, 32 and 33, Industry Group No.  
24 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 1357, is  
13 amended to read as follows:

14           Section 1357. There are hereby specifically exempted from the  
15 tax levied by the Oklahoma Sales Tax Code:

16           1. Transportation of school pupils to and from elementary  
17 schools or high schools in motor or other vehicles;

18           2. Transportation of persons where the fare of each person does  
19 not exceed One Dollar (\$1.00), or local transportation of persons  
20 within the corporate limits of a municipality except by taxicabs;

21           3. Sales for resale to persons engaged in the business of  
22 reselling the articles purchased, whether within or without the  
23 state, provided that such sales to residents of this state are made  
24 to persons to whom sales tax permits have been issued as provided in

1 the Oklahoma Sales Tax Code. This exemption shall not apply to the  
2 sales of articles made to persons holding permits when such persons  
3 purchase items for their use and which they are not regularly  
4 engaged in the business of reselling; neither shall this exemption  
5 apply to sales of tangible personal property to peddlers, solicitors  
6 and other salespersons who do not have an established place of  
7 business and a sales tax permit. The exemption provided by this  
8 paragraph shall apply to sales of motor fuel or diesel fuel to a  
9 Group Five vendor, but the use of such motor fuel or diesel fuel by  
10 the Group Five vendor shall not be exempt from the tax levied by the  
11 Oklahoma Sales Tax Code. The purchase of motor fuel or diesel fuel  
12 is exempt from sales tax when the motor fuel is for shipment outside  
13 this state and consumed by a common carrier by rail in the conduct  
14 of its business. The sales tax shall apply to the purchase of motor  
15 fuel or diesel fuel in Oklahoma by a common carrier by rail when  
16 such motor fuel is purchased for fueling, within this state, of any  
17 locomotive or other motorized flanged wheel equipment;

18 4. Sales of advertising space in newspapers and periodicals;

19 5. Sales of programs relating to sporting and entertainment  
20 events, and sales of advertising on billboards (including signage,  
21 posters, panels, marquees, or on other similar surfaces, whether  
22 indoors or outdoors) or in programs relating to sporting and  
23 entertainment events, and sales of any advertising, to be displayed  
24 at or in connection with a sporting event, via the Internet,

1 electronic display devices, or through public address or broadcast  
2 systems. The exemption authorized by this paragraph shall be  
3 effective for all sales made on or after January 1, 2001;

4 6. Sales of any advertising, other than the advertising  
5 described by paragraph 5 of this section, via the Internet,  
6 electronic display devices, or through the electronic media,  
7 including radio, public address or broadcast systems, television  
8 (whether through closed circuit broadcasting systems or otherwise),  
9 and cable and satellite television, and the servicing of any  
10 advertising devices;

11 7. Eggs, feed, supplies, machinery and equipment purchased by  
12 persons regularly engaged in the business of raising worms, fish,  
13 any insect or any other form of terrestrial or aquatic animal life  
14 and used for the purpose of raising same for marketing. This  
15 exemption shall only be granted and extended to the purchaser when  
16 the items are to be used and in fact are used in the raising of  
17 animal life as set out above. Each purchaser shall certify, in  
18 writing, on the invoice or sales ticket retained by the vendor that  
19 the purchaser is regularly engaged in the business of raising such  
20 animal life and that the items purchased will be used only in such  
21 business. The vendor shall certify to the Oklahoma Tax Commission  
22 that the price of the items has been reduced to grant the full  
23 benefit of the exemption. Violation hereof by the purchaser or  
24 vendor shall be a misdemeanor;

1       8. Sale of natural or artificial gas and electricity, and  
2 associated delivery or transmission services, when sold exclusively  
3 for residential use. Provided, this exemption shall not apply to  
4 any sales tax levied by a city or town, or a county, or any other  
5 jurisdiction in this state;

6       9. In addition to the exemptions authorized by Section 1357.6  
7 of this title, sales of drugs sold pursuant to a prescription  
8 written for the treatment of human beings by a person licensed to  
9 prescribe the drugs, and sales of insulin and medical oxygen.  
10 Provided, this exemption shall not apply to over-the-counter drugs;

11       10. Transfers of title or possession of empty, partially  
12 filled, or filled returnable oil and chemical drums to any person  
13 who is not regularly engaged in the business of selling, reselling  
14 or otherwise transferring empty, partially filled, or filled  
15 returnable oil drums;

16       11. Sales of one-way utensils, paper napkins, paper cups,  
17 disposable hot containers and other one-way carry out materials to a  
18 vendor of meals or beverages;

19       12. Sales of food or food products for home consumption which  
20 are purchased in whole or in part with coupons issued pursuant to  
21 the federal food stamp program as authorized by Sections 2011  
22 through 2029 of Title 7 of the United States Code, as to that  
23 portion purchased with such coupons. The exemption provided for  
24 such sales shall be inapplicable to such sales upon the effective

1 date of any federal law that removes the requirement of the  
2 exemption as a condition for participation by the state in the  
3 federal food stamp program;

4 13. Sales of food or food products, or any equipment or  
5 supplies used in the preparation of the food or food products to or  
6 by an organization which:

7 a. is exempt from taxation pursuant to the provisions of  
8 Section 501(c)(3) of the Internal Revenue Code, 26  
9 U.S.C., Section 501(c)(3), and which provides and  
10 delivers prepared meals for home consumption to  
11 elderly or homebound persons as part of a program  
12 commonly known as "Meals on Wheels" or "Mobile Meals",  
13 or

14 b. is exempt from taxation pursuant to the provisions of  
15 Section 501(c)(3) of the Internal Revenue Code, 26  
16 U.S.C., Section 501(c)(3), and which receives federal  
17 funding pursuant to the Older Americans Act of 1965,  
18 as amended, for the purpose of providing nutrition  
19 programs for the care and benefit of elderly persons;

20 14. a. Sales of tangible personal property or services to or  
21 by organizations which are exempt from taxation  
22 pursuant to the provisions of Section 501(c)(3) of the  
23 Internal Revenue Code, 26 U.S.C., Section 501(c)(3),  
24 and:

1 (1) are primarily involved in the collection and  
2 distribution of food and other household products  
3 to other organizations that facilitate the  
4 distribution of such products to the needy and  
5 such distributee organizations are exempt from  
6 taxation pursuant to the provisions of Section  
7 501(c) (3) of the Internal Revenue Code, 26  
8 U.S.C., Section 501(c) (3), or

9 (2) facilitate the distribution of such products to  
10 the needy.

11 b. Sales made in the course of business for profit or  
12 savings, competing with other persons engaged in the  
13 same or similar business shall not be exempt under  
14 this paragraph;

15 15. Sales of tangible personal property or services to  
16 children's homes which are located on church-owned property and are  
17 operated by organizations exempt from taxation pursuant to the  
18 provisions of the Internal Revenue Code, 26 U.S.C., Section  
19 501(c) (3);

20 16. Sales of computers, data processing equipment, related  
21 peripherals and telephone, telegraph or telecommunications service  
22 and equipment for use in a qualified aircraft maintenance or  
23 manufacturing facility. For purposes of this paragraph, "qualified  
24 aircraft maintenance or manufacturing facility" means a new or

1 expanding facility primarily engaged in aircraft repair, building or  
2 rebuilding whether or not on a factory basis, whose total cost of  
3 construction exceeds the sum of Five Million Dollars (\$5,000,000.00)  
4 and which employs at least two hundred fifty (250) new full-time-  
5 equivalent employees, as certified by the Oklahoma Employment  
6 Security Commission, upon completion of the facility. In order to  
7 qualify for the exemption provided for by this paragraph, the cost  
8 of the items purchased by the qualified aircraft maintenance or  
9 manufacturing facility shall equal or exceed the sum of Two Million  
10 Dollars (\$2,000,000.00);

11 17. Sales of tangible personal property consumed or  
12 incorporated in the construction or expansion of a qualified  
13 aircraft maintenance or manufacturing facility as defined in  
14 paragraph 16 of this section. For purposes of this paragraph, sales  
15 made to a contractor or subcontractor that has previously entered  
16 into a contractual relationship with a qualified aircraft  
17 maintenance or manufacturing facility for construction or expansion  
18 of such a facility shall be considered sales made to a qualified  
19 aircraft maintenance or manufacturing facility;

20 18. Sales of the following telecommunications services:

21 a. Interstate and International "800 service". "800  
22 service" means a "telecommunications service" that  
23 allows a caller to dial a toll-free number without  
24 incurring a charge for the call. The service is

1 typically marketed under the name "800", "855", "866",  
2 "877", and "888" toll-free calling, and any subsequent  
3 numbers designated by the Federal Communications  
4 Commission, or

5 b. Interstate and International "900 service". "900  
6 service" means an inbound toll "telecommunications  
7 service" purchased by a subscriber that allows the  
8 subscriber's customers to call in to the subscriber's  
9 prerecorded announcement or live service. "900  
10 service" does not include the charge for: collection  
11 services provided by the seller of the  
12 "telecommunications services" to the subscriber, or  
13 service or product sold by the subscriber to the  
14 subscriber's customer. The service is typically  
15 marketed under the name "900" service, and any  
16 subsequent numbers designated by the Federal  
17 Communications Commission,

18 c. Interstate and International "private communications  
19 service". "Private communications service" means a  
20 "telecommunications service" that entitles the  
21 customer to exclusive or priority use of a  
22 communications channel or group of channels between or  
23 among termination points, regardless of the manner in  
24 which such channel or channels are connected, and

1 includes switching capacity, extension lines,  
2 stations, and any other associated services that are  
3 provided in connection with the use of such channel or  
4 channels,

5 d. "Value-added nonvoice data service". "Value-added  
6 nonvoice data service" means a service that otherwise  
7 meets the definition of "telecommunications services"  
8 in which computer processing applications are used to  
9 act on the form, content, code, or protocol of the  
10 information or data primarily for a purpose other than  
11 transmission, conveyance or routing,

12 e. Interstate and International telecommunications  
13 service which is:

14 (1) rendered by a company for private use within its  
15 organization, or

16 (2) used, allocated, or distributed by a company to  
17 its affiliated group,

18 f. Regulatory assessments and charges, including charges  
19 to fund the Oklahoma Universal Service Fund, the  
20 Oklahoma Lifeline Fund and the Oklahoma High Cost  
21 Fund, and

22 g. Telecommunications nonrecurring charges, including but  
23 not limited to the installation, connection, change or  
24

1 initiation of telecommunications services which are  
2 not associated with a retail consumer sale;

3 19. Sales of railroad track spikes manufactured and sold for  
4 use in this state in the construction or repair of railroad tracks,  
5 switches, sidings and turnouts;

6 20. Sales of aircraft and aircraft parts provided such sales  
7 occur at a qualified aircraft maintenance facility. As used in this  
8 paragraph, "qualified aircraft maintenance facility" means a  
9 facility operated by an air common carrier at which there were  
10 employed at least two thousand (2,000) full-time-equivalent  
11 employees in the preceding calendar year as certified by the  
12 Oklahoma Employment Security Commission and which is primarily  
13 related to the fabrication, repair, alteration, modification,  
14 refurbishing, maintenance, building or rebuilding of commercial  
15 aircraft or aircraft parts used in air common carriage. For  
16 purposes of this paragraph, "air common carrier" shall also include  
17 members of an affiliated group as defined by Section 1504 of the  
18 Internal Revenue Code, of 1986, as amended, 26 U.S.C., Section 1504;

19 21. Sales of machinery and equipment purchased and used by  
20 persons and establishments primarily engaged in computer services  
21 and data processing:

22 a. as defined under Industrial Group Numbers 7372 and  
23 7373 of the Standard Industrial Classification (SIC)  
24 Manual, latest version, which derive at least fifty

1           percent (50%) of their annual gross revenues from the  
2           sale of a product or service to an out-of-state buyer  
3           or consumer, and

4           b.    as defined under Industrial Group Number 7374 of the  
5           SIC Manual, latest version, which derive at least  
6           eighty percent (80%) of their annual gross revenues  
7           from the sale of a product or service to an out-of-  
8           state buyer or consumer.

9           Eligibility for the exemption set out in this paragraph shall be  
10          established, subject to review by the Tax Commission, by annually  
11          filing an affidavit with the Tax Commission stating that the  
12          facility so qualifies and such information as required by the Tax  
13          Commission. For purposes of determining whether annual gross  
14          revenues are derived from sales to out-of-state buyers or consumers,  
15          all sales to the federal government shall be considered to be to an  
16          out-of-state buyer or consumer;

17          22. Sales of prosthetic devices to an individual for use by  
18          such individual. For purposes of this paragraph, "prosthetic  
19          device" shall have the same meaning as provided in Section 1357.6 of  
20          this title, but shall not include corrective eye glasses, contact  
21          lenses or hearing aids;

22          23. Sales of tangible personal property or services to a motion  
23          picture or television production company to be used or consumed in  
24          connection with an eligible production. For purposes of this

1 paragraph, "eligible production" means a documentary, special, music  
2 video, or a television commercial or television program that will  
3 serve as a pilot for or be a segment of an ongoing dramatic or  
4 situation comedy series filmed or taped for network or national or  
5 regional syndication or a feature-length motion picture intended for  
6 theatrical release or for network or national or regional  
7 syndication or broadcast. The provisions of this paragraph shall  
8 apply to sales occurring on or after July 1, 1996. In order to  
9 qualify for the exemption, the motion picture or television  
10 production company shall file any documentation and information  
11 required to be submitted pursuant to rules promulgated by the Tax  
12 Commission;

13 24. Sales of diesel fuel sold for consumption by commercial  
14 vessels, barges and other commercial watercraft;

15 25. Sales of tangible personal property or services to tax-  
16 exempt independent nonprofit biomedical research foundations that  
17 provide educational programs for Oklahoma science students and  
18 teachers and to tax-exempt independent nonprofit community blood  
19 banks headquartered in this state;

20 26. Effective May 6, 1992, sales of wireless telecommunications  
21 equipment to a vendor who subsequently transfers the equipment at no  
22 charge or for a discounted charge to a consumer as part of a  
23 promotional package or as an inducement to commence or continue a  
24 contract for wireless telecommunications services;

1       27. Effective January 1, 1991, leases of rail transportation  
2 cars to haul coal to coal-fired plants located in this state which  
3 generate electric power;

4       28. Beginning July 1, 2005, sales of aircraft engine repairs,  
5 modification, and replacement parts, sales of aircraft frame repairs  
6 and modification, aircraft interior modification, and paint, and  
7 sales of services employed in the repair, modification and  
8 replacement of parts of aircraft engines, aircraft frame and  
9 interior repair and modification, and paint;

10       29. Sales of materials and supplies to the owner or operator of  
11 a ship, motor vessel or barge that is used in interstate or  
12 international commerce if the materials and supplies:

13           a. are loaded on the ship, motor vessel or barge and used  
14                in the maintenance and operation of the ship, motor  
15                vessel or barge, or

16           b. enter into and become component parts of the ship,  
17                motor vessel or barge;

18       30. Sales of tangible personal property made at estate sales at  
19 which such property is offered for sale on the premises of the  
20 former residence of the decedent by a person who is not required to  
21 be licensed pursuant to the Transient Merchant Licensing Act, or who  
22 is not otherwise required to obtain a sales tax permit for the sale  
23 of such property pursuant to the provisions of Section 1364 of this  
24 title; provided:

- 1           a.    such sale or event may not be held for a period  
2                    exceeding three (3) consecutive days,  
3           b.    the sale must be conducted within six (6) months of  
4                    the date of death of the decedent, and  
5           c.    the exemption allowed by this paragraph shall not be  
6                    allowed for property that was not part of the  
7                    decedent's estate;

8           31.   Beginning January 1, 2004, sales of electricity and  
9           associated delivery and transmission services, when sold exclusively  
10           for use by an oil and gas operator for reservoir dewatering projects  
11           and associated operations commencing on or after July 1, 2003, in  
12           which the initial water-to-oil ratio is greater than or equal to  
13           five-to-one water-to-oil, and such oil and gas development projects  
14           have been classified by the Corporation Commission as a reservoir  
15           dewatering unit;

16           32.   Sales of prewritten computer software that is delivered  
17           electronically. For purposes of this paragraph, "delivered  
18           electronically" means delivered to the purchaser by means other than  
19           tangible storage media;

20           33.   Sales of modular dwelling units when built at a production  
21           facility and moved in whole or in parts, to be assembled on-site,  
22           and permanently affixed to the real property and used for  
23           residential or commercial purposes. The exemption provided by this  
24           paragraph shall equal forty-five percent (45%) of the total sales

1 price of the modular dwelling unit. For purposes of this paragraph,  
2 "modular dwelling unit" means a structure that is not subject to the  
3 motor vehicle excise tax imposed pursuant to Section 2103 of this  
4 title;

5 34. Sales of tangible personal property or services to persons  
6 who are residents of Oklahoma and have been honorably discharged  
7 from active service in any branch of the Armed Forces of the United  
8 States or Oklahoma National Guard and who have been certified by the  
9 United States Department of Veterans Affairs or its successor to be  
10 in receipt of disability compensation at the one-hundred-percent  
11 rate and the disability shall be permanent and have been sustained  
12 through military action or accident or resulting from disease  
13 contracted while in such active service; provided, sales for the  
14 benefit of the person to a spouse of the eligible person or to a  
15 member of the household in which the eligible person resides and who  
16 is authorized to make purchases on the person's behalf, when such  
17 eligible person is not present at the sale, shall also be exempt for  
18 purposes of this paragraph. Sales qualifying for the exemption  
19 authorized by this paragraph shall not exceed Twenty-five Thousand  
20 Dollars (\$25,000.00) per year per individual. Upon request of the  
21 Tax Commission, a person asserting or claiming the exemption  
22 authorized by this paragraph shall provide a statement, executed  
23 under oath, that the total sales amounts for which the exemption is  
24 applicable have not exceeded Twenty-five Thousand Dollars

1 (\$25,000.00) per year. If the amount of such exempt sales exceeds  
2 such amount, the sales tax in excess of the authorized amount shall  
3 be treated as a direct sales tax liability and may be recovered by  
4 the Tax Commission in the same manner provided by law for other  
5 taxes, including penalty and interest;

6 35. Sales of electricity to the operator, specifically  
7 designated by the Corporation Commission, of a spacing unit or lease  
8 from which oil is produced or attempted to be produced using  
9 enhanced recovery methods, including, but not limited to, increased  
10 pressure in a producing formation through the use of water or  
11 saltwater if the electrical usage is associated with and necessary  
12 for the operation of equipment required to inject or circulate  
13 fluids in a producing formation for the purpose of forcing oil or  
14 petroleum into a wellbore for eventual recovery and production from  
15 the wellhead. In order to be eligible for the sales tax exemption  
16 authorized by this paragraph, the total content of oil recovered  
17 after the use of enhanced recovery methods shall not exceed one  
18 percent (1%) by volume. The exemption authorized by this paragraph  
19 shall be applicable only to the state sales tax rate and shall not  
20 be applicable to any county or municipal sales tax rate;

21 36. Sales of intrastate charter and tour bus transportation.  
22 As used in this paragraph, "intrastate charter and tour bus  
23 transportation" means the transportation of persons from one  
24 location in this state to another location in this state in a motor

1 vehicle which has been constructed in such a manner that it may  
2 lawfully carry more than eighteen persons, and which is ordinarily  
3 used or rented to carry persons for compensation. Provided, this  
4 exemption shall not apply to regularly scheduled bus transportation  
5 for the general public;

6 37. Sales of vitamins, minerals and dietary supplements by a  
7 licensed chiropractor to a person who is the patient of such  
8 chiropractor at the physical location where the chiropractor  
9 provides chiropractic care or services to such patient. The  
10 provisions of this paragraph shall not be applicable to any drug,  
11 medicine or substance for which a prescription by a licensed  
12 physician is required;

13 38. Sales of goods, wares, merchandise, tangible personal  
14 property, machinery and equipment to a web search portal located in  
15 this state which derives at least eighty percent (80%) of its annual  
16 gross revenue from the sale of a product or service to an out-of-  
17 state buyer or consumer. For purposes of this paragraph, "web  
18 search portal" means an establishment classified under NAICS code  
19 519130 which operates web sites that use a search engine to generate  
20 and maintain extensive databases of Internet addresses and content  
21 in an easily searchable format;

22 39. Sales of tangible personal property consumed or  
23 incorporated in the construction or expansion of a facility for a  
24 corporation organized under Section 437 et seq. of Title 18 of the

1 Oklahoma Statutes as a rural electric cooperative. For purposes of  
2 this paragraph, sales made to a contractor or subcontractor that has  
3 previously entered into a contractual relationship with a rural  
4 electric cooperative for construction or expansion of a facility  
5 shall be considered sales made to a rural electric cooperative;

6 40. Sales of tangible personal property or services to a  
7 business primarily engaged in the repair of consumer electronic  
8 goods, including, but not limited to, cell phones, compact disc  
9 players, personal computers, MP3 players, digital devices for the  
10 storage and retrieval of information through hard-wired or wireless  
11 computer or Internet connections, if the devices are sold to the  
12 business by the original manufacturer of such devices and the  
13 devices are repaired, refitted or refurbished for sale by the entity  
14 qualifying for the exemption authorized by this paragraph directly  
15 to retail consumers or if the devices are sold to another business  
16 entity for sale to retail consumers;

17 41. Before July 1, 2014, sales of rolling stock when sold or  
18 leased by the manufacturer, regardless of whether the purchaser is a  
19 public services corporation engaged in business as a common carrier  
20 of property or passengers by railway, for use or consumption by a  
21 common carrier directly in the rendition of public service. For  
22 purposes of this paragraph, "rolling stock" means locomotives,  
23 autocars and railroad cars; and

24

1       42. Sales of gold, silver, platinum, palladium or other bullion  
2 items such as coins and bars and legal tender of any nation, which  
3 legal tender is sold according to its value as precious metal or as  
4 an investment. To qualify for the exemption, the gold, silver,  
5 platinum, palladium or other bullion items must be stored within a  
6 recognized depository facility. As used in the paragraph, "bullion"  
7 means any precious metal, including, but not limited to, gold,  
8 silver, platinum and palladium, that is in such a state or condition  
9 that its value depends upon its precious metal content and not its  
10 form. As used in this paragraph, "depository facility" means an  
11 institution that accepts delivery of precious metals on behalf of  
12 the purchaser and provides storage of such precious metals, but  
13 shall not include financial institutions as defined in subsection E  
14 of Section 71 of Title 62 of the Oklahoma Statutes. The exemption  
15 authorized by this paragraph shall not apply to fabricated metals  
16 that have been processed or manufactured for artistic use or as  
17 jewelry.

18       SECTION 3.       AMENDATORY       68 O.S. 2011, Section 1359, is  
19 amended to read as follows:

20       Section 1359. There are hereby specifically exempted from the  
21 tax levied by Section 1350 et seq. of this title:

22       1. Sales of goods, wares, merchandise, tangible personal  
23 property, machinery and equipment to a manufacturer for use in a  
24 manufacturing operation. Goods, wares, merchandise, property,

1 machinery and equipment used in a nonmanufacturing activity or  
2 process as set forth in paragraph 9 of Section 1352 of this title  
3 shall not be eligible for the exemption provided for in this  
4 subsection by virtue of the activity or process being performed in  
5 conjunction with or integrated into a manufacturing operation.

6 For the purposes of this paragraph, sales made to any person,  
7 firm or entity that has entered into a contractual relationship for  
8 the construction and improvement of manufacturing goods, wares,  
9 merchandise, property, machinery and equipment for use in a  
10 manufacturing operation shall be considered sales made to a  
11 manufacturer which is defined or classified in the North American  
12 Classification System (NAICS) Manual under Industry Group No.  
13 324110. Such purchase shall be evidenced by a copy of the sales  
14 ticket or invoice to be retained by the vendor indicating that the  
15 purchases are made for and on behalf of such manufacturer and set  
16 out the name of such manufacturer as well as include a copy of the  
17 Manufacturing Exemption Permit of the manufacturer. Any person who  
18 wrongfully or erroneously certifies that purchases are being made on  
19 behalf of such manufacturer or who otherwise violates this paragraph  
20 shall be guilty of a misdemeanor and upon conviction thereof shall  
21 be fined an amount equal to double the amount of sales tax involved  
22 or incarcerated for not more than sixty (60) days or both;

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1           2. Ethyl alcohol when sold and used for the purpose of blending  
2 same with motor fuel on which motor fuel tax is levied by Section  
3 500.4 of this title;

4           3. Sales of containers when sold to a person regularly engaged  
5 in the business of reselling empty or filled containers or when  
6 purchased for the purpose of packaging raw products of farm, garden,  
7 or orchard for resale to the consumer or processor. This exemption  
8 shall not apply to the sale of any containers used more than once  
9 and which are ordinarily known as returnable containers, except  
10 returnable soft drink bottles and the cartons, crates, pallets, and  
11 containers used to transport returnable soft drink bottles. Each  
12 and every transfer of title or possession of such returnable  
13 containers in this state to any person who is not regularly engaged  
14 in the business of selling, reselling or otherwise transferring  
15 empty or filled containers shall be taxable under this Code.

16 Additionally, this exemption shall not apply to the sale of labels  
17 or other materials delivered along with items sold but which are not  
18 necessary or absolutely essential to the sale of the sold  
19 merchandise;

20           4. Sales of or transfers of title to or possession of any  
21 containers, after June 30, 1987, used or to be used more than once  
22 and which are ordinarily known as returnable containers and which do  
23 or will contain beverages defined by paragraphs 4 and 14 of Section  
24 506 of Title 37 of the Oklahoma Statutes, or water for human

1 consumption and the cartons, crates, pallets, and containers used to  
2 transport such returnable containers;

3 5. Sale of tangible personal property when sold by the  
4 manufacturer to a person who transports it to a state other than  
5 Oklahoma for immediate and exclusive use in a state other than  
6 Oklahoma. Provided, no sales at a retail outlet shall qualify for  
7 the exemption under this paragraph;

8 6. Machinery, equipment, fuels and chemicals or other materials  
9 incorporated into and directly used or consumed in the process of  
10 treatment to substantially reduce the volume or harmful properties  
11 of hazardous waste at treatment facilities specifically permitted  
12 pursuant to the Oklahoma Hazardous Waste Management Act and operated  
13 at the place of waste generation, or facilities approved by the  
14 Department of Environmental Quality for the cleanup of a site of  
15 contamination. The term "hazardous" waste may include low-level  
16 radioactive waste for the purpose of this paragraph;

17 7. Except as otherwise provided by subsection I of Section 3658  
18 of this title pursuant to which the exemption authorized by this  
19 paragraph may not be claimed, sales of tangible personal property to  
20 a qualified manufacturer or distributor to be consumed or  
21 incorporated in a new manufacturing or distribution facility or to  
22 expand an existing manufacturing or distribution facility. For  
23 purposes of this paragraph, sales made to a contractor or  
24 subcontractor that has previously entered into a contractual

1 relationship with a qualified manufacturer or distributor for  
2 construction or expansion of a manufacturing or distribution  
3 facility shall be considered sales made to a qualified manufacturer  
4 or distributor. For the purposes of this paragraph, "qualified  
5 manufacturer or distributor" means:

6 a. any manufacturing enterprise whose total cost of  
7 construction of a new or expanded facility exceeds the  
8 sum of Five Million Dollars (\$5,000,000.00) and in  
9 which at least one hundred (100) new full-time-  
10 equivalent employees, as certified by the Oklahoma  
11 Employment Security Commission, are added and  
12 maintained for a period of at least thirty-six (36)  
13 months as a direct result of the new or expanded  
14 facility,

15 b. any manufacturing enterprise whose total cost of  
16 construction of a new or expanded facility exceeds the  
17 sum of Ten Million Dollars (\$10,000,000.00) and the  
18 combined cost of construction material, machinery,  
19 equipment and other tangible personal property exempt  
20 from sales tax under the provisions of this paragraph  
21 exceeds the sum of Fifty Million Dollars  
22 (\$50,000,000.00) and in which at least seventy-five  
23 (75) new full-time-equivalent employees, as certified  
24 by the Oklahoma Employment Security Commission, are

1 added and maintained for a period of at least thirty-  
2 six (36) months as a direct result of the new or  
3 expanded facility,

4 c. any manufacturing enterprise whose total cost of  
5 construction of an expanded facility exceeds the sum  
6 of Three Hundred Million Dollars (\$300,000,000.00) and  
7 in which the manufacturer has and maintains an average  
8 employment level of at least one thousand seven  
9 hundred fifty (1,750) full-time-equivalent employees,  
10 as certified by the Employment Security Commission, or

11 d. any enterprise primarily engaged in the general  
12 wholesale distribution of groceries defined or  
13 classified in the North American Industry  
14 Classification System (NAICS) Manual under Industry  
15 Groups No. 4244 and 4245 and which has at least  
16 seventy-five percent (75%) of its total sales to in-  
17 state customers or buyers and whose total cost of  
18 construction of a new or expanded facility exceeds the  
19 sum of Forty Million Dollars (\$40,000,000.00) with  
20 such construction commencing on or after July 1, 2005,  
21 and before December 31, 2005, and which at least fifty  
22 new full-time-equivalent employees, as certified by  
23 the Oklahoma Employment Security Commission, are added  
24 and maintained for a period of at least thirty-six

1 (36) months as a direct result of the new or expanded  
2 facility.

3 For purposes of this paragraph, the total cost of construction  
4 shall include building and construction material and engineering and  
5 architectural fees or charges directly associated with the  
6 construction of a new or expanded facility. The total cost of  
7 construction shall not include attorney fees. For purposes of  
8 subparagraph c of this paragraph, the total cost of construction  
9 shall also include the cost of qualified depreciable property as  
10 defined in Section 2357.4 of this title and labor services performed  
11 in the construction of an expanded facility. For the purpose of  
12 subparagraph d of this paragraph, the total cost of construction  
13 shall also include the cost of all parking, security and dock  
14 structures or facilities necessary to manage, process or secure  
15 vehicles used to receive and/or distribute groceries through such a  
16 facility. The employment requirement of this paragraph can be  
17 satisfied by the employment of a portion of the required number of  
18 new full-time-equivalent employees at a manufacturing or  
19 distribution facility that is related to or supported by the new or  
20 expanded manufacturing or distribution facility as long as both  
21 facilities are owned by one person or business entity. For purposes  
22 of this section, "manufacturing facility" shall mean building and  
23 land improvements used in manufacturing as defined in Section 1352  
24 of this title and shall also mean building and land improvements

1 used for the purpose of packing, repackaging, labeling or assembling  
2 for distribution to market, products at least seventy percent (70%)  
3 of which are made in Oklahoma by the same company but at an off-  
4 site, in-state manufacturing or distribution facility or facilities.  
5 It shall not include a retail outlet unless the retail outlet is  
6 operated in conjunction with and on the same site or premises as the  
7 manufacturing facility. Up to ten percent (10%) of the square feet  
8 of a manufacturing or distribution facility building may be devoted  
9 to office space used to provide clerical support for the  
10 manufacturing operation. Such ten percent (10%) may be in a  
11 separate building as long as it is part of the same contiguous tract  
12 of property on which the manufacturing or distribution facility is  
13 located. Only sales of tangible personal property made after June  
14 1, 1988, shall be eligible for the exemption provided by this  
15 paragraph. The exemption authorized pursuant to subparagraph d of  
16 this paragraph shall only become effective when the governing body  
17 of the municipality in which the enterprise is located approves a  
18 resolution expressing the municipality's support for the  
19 construction for such new or expanded facility. Upon approval by  
20 the municipality, the municipality shall forward a copy of such  
21 resolution to the Oklahoma Tax Commission;

22 8. Sales of tangible personal property purchased and used by a  
23 licensed radio or television station in broadcasting. This  
24 exemption shall not apply unless such machinery and equipment is

1 used directly in the manufacturing process, is necessary for the  
2 proper production of a broadcast signal or is such that the failure  
3 of the machinery or equipment to operate would cause broadcasting to  
4 cease. This exemption begins with the equipment used in producing  
5 live programming or the electronic equipment directly behind the  
6 satellite receiving dish or antenna, and ends with the transmission  
7 of the broadcast signal from the broadcast antenna system. For  
8 purposes of this paragraph, "proper production" shall include, but  
9 not be limited to, machinery or equipment required by Federal  
10 Communications Commission rules and regulations;

11 9. Sales of tangible personal property purchased or used by a  
12 licensed cable television operator in cablecasting. This exemption  
13 shall not apply unless such machinery and equipment is used directly  
14 in the manufacturing process, is necessary for the proper production  
15 of a cablecast signal or is such that the failure of the machinery  
16 or equipment to operate would cause cablecasting to cease. This  
17 exemption begins with the equipment used in producing local  
18 programming or the electronic equipment behind the satellite  
19 receiving dish, microwave tower or antenna, and ends with the  
20 transmission of the signal from the cablecast head-end system. For  
21 purposes of this paragraph, "proper production" shall include, but  
22 not be limited to, machinery or equipment required by Federal  
23 Communications Commission rules and regulations;

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1        10. Sales of packaging materials for use in packing, shipping  
2 or delivering tangible personal property for sale when sold to a  
3 producer of agricultural products. This exemption shall not apply  
4 to the sale of any packaging material which is ordinarily known as a  
5 returnable container;

6        11. Sales of any pattern used in the process of manufacturing  
7 iron, steel or other metal castings. The exemption provided by this  
8 paragraph shall be applicable irrespective of ownership of the  
9 pattern provided that such pattern is used in the commercial  
10 production of metal castings;

11       12. Deposits or other charges made and which are subsequently  
12 refunded for returnable cartons, crates, pallets, and containers  
13 used to transport cement and cement products;

14       13. Beginning January 1, 1998, machinery, electricity, fuels,  
15 explosives and materials, excluding chemicals, used in the mining of  
16 coal in this state;

17       14. Deposits, rent or other charges made for returnable  
18 cartons, crates, pallets, and containers used to transport mushrooms  
19 or mushroom products from a farm for resale to the consumer or  
20 processor; and

21       15. Sales of tangible personal property and services used or  
22 consumed in all phases of the extraction and manufacturing of  
23 crushed stone and sand, including but not limited to site  
24 preparation, dredging, overburden removal, explosive placement and

1 detonation, onsite material hauling and/or transfer, material  
2 washing, screening and/or crushing, product weighing and site  
3 reclamation.

4 SECTION 4. This act shall become effective July 1, 2012.

5 SECTION 5. It being immediately necessary for the preservation  
6 of the public peace, health and safety, an emergency is hereby  
7 declared to exist, by reason whereof this act shall take effect and  
8 be in full force from and after its passage and approval.

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