

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 HOUSE BILL 3014

By: Scott

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5
6 AS INTRODUCED

7 An Act relating to revenue and taxation; amending 68
8 O.S. 2001, Section 3603, as last amended by Section
9 1, Chapter 369, O.S.L. 2009 (68 O.S. Supp. 2009,
10 Section 3603), which relates to the Oklahoma Quality
11 Jobs Program Act; modifying definitions; providing
12 certain establishments eligible for incentive
13 payments; prescribing net benefit rate for designated
14 establishments; authorizing income tax credit for
15 qualified expenditure for electronic benefit transfer
16 devices; defining terms; specifying amount of credit;
17 prohibiting tax credit from being used to reduce
18 liability to less than specified amount; authorizing
19 carryover of unused credit amount; providing for
20 codification; providing effective dates; and
21 declaring an emergency.

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

23 SECTION 1. AMENDATORY 68 O.S. 2001, Section 3603, as
24 last amended by Section 1, Chapter 369, O.S.L. 2009 (68 O.S. Supp.
2009, Section 3603), is amended to read as follows:

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

1. a. "Basic industry" means:

1 (1) those manufacturing activities defined or
2 classified in the NAICS Manual under Industry
3 Sector Nos. 31, 32 and 33, Industry Group No.
4 5111 or Industry No. 11331,

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

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

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

21 (c) the exempt wholesale generator facility
22 sells to purchasers located outside the
23 state for consumption in activities located
24 outside the state at least ninety percent

1 (90%) of the total electrical energy output
2 which qualifies for the specialized
3 treatment provided by the Energy Policy Act
4 of 1992, P.L. 102-486, 106 Stat. 2776, as
5 amended, and federal regulations adopted
6 pursuant thereto, and

7 (d) the facility is constructed on or after July
8 1, 1996,

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

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

21 (5) distribution centers for retail or wholesale
22 businesses defined or classified in the NAICS
23 Manual under Sector No. 42, if forty percent
24

1 (40%) or more of the inventory processed through
2 such warehouse is shipped out-of-state,

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

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

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

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

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

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

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

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,
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- 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, and

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

21 (10) those activities related to extraction of crude
22 petroleum and natural gas defined or classified
23 in the NAICS Manual under Industry Group No.
24 2111, subject to the limitations provided in

1 paragraph 3 of this subsection and paragraph 3 of
2 subsection B of this section,

3 (11) those activities performed by the federal
4 civilian workforce at a facility of the Federal
5 Aviation Administration located in this state if
6 the Director of the Department of Commerce
7 determines or is notified that the federal
8 government is soliciting proposals or otherwise
9 inviting states to compete for additional federal
10 civilian employment or expansion of federal
11 civilian employment at such facilities,

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

15 (13) those real estate or brokerage activities
16 classified in the NAICS Manual under U.S.
17 Industry No. 53120 for which at least seventy-
18 five percent (75%) of the establishment's
19 revenues are attributed to out-of-state sales and
20 at least seventy-five percent (75%) of the real
21 estate transactions generating those revenues are
22 attributed to real property located outside the
23 State of Oklahoma,

24

1 (14) those activities conducted by an establishment
2 classified in the NAICS Manual under U.S.

3 Industry No. 445110,

4 (15) those activities conducted by an establishment
5 classified in the NAICS Manual under U.S.

6 Industry No. 445210,

7 (16) those activities conducted by an establishment
8 classified in the NAICS Manual under U.S.

9 Industry No. 445220, or

10 (17) those activities conducted by an establishment
11 classified in the NAICS Manual under U.S.

12 Industry No. 445230.

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

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

24 (2) coverage for basic hospital care,

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

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

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

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

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

1 the calendar quarter for which the first incentive payment claim is
2 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 6 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, if the contract involves
7 | the performance of such services performed on or after the effective
8 | date of this act by the employees of the business entity within the
9 | State of Oklahoma or if the contract involves the performance of
10 | such services performed on or after the effective date of this act
11 | by 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;

14 | 12. "Qualified federal contractor verifier" means a nonprofit
15 | entity organized under the laws of the State of Oklahoma, having an
16 | affiliation with a comprehensive university which is part of The
17 | Oklahoma State System of Higher Education, and having the following
18 | characteristics:

- 19 | a. established multiyear classified and unclassified
20 | indefinite-delivery/indefinite-quantity federal
21 | contract vehicles in excess of Fifty Million Dollars
22 | (\$50,000,000.00),
23 | b. current capability to sponsor and maintain personnel
24 | security clearances and authorized by the federal

1 government to handle and perform classified work up to
2 the Top Secret Sensitive Compartmented Information
3 levels,

4 c. at least one on-site federally certified Sensitive
5 Compartmented Information Facility,

6 d. on-site secure mass data storage complex with the
7 capability of isolating, segregating and protecting
8 corporate proprietary and classified information,

9 e. trusted agent status by maintaining no ownership of,
10 vested interest in, nor royalty production from any
11 intellectual property,

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

14 g. the direct access to restricted air space through a
15 formalized memorandum of agreement with the Department
16 of Defense,

17 h. at least five thousand (5,000) acres available for
18 outdoor testing and training facilities, and

19 i. the ability to house state-of-the-art surety
20 facilities, including chemical, biological,
21 radiological, explosives, electronics, and unmanned
22 systems laboratories and ranges;

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

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

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

13 16. "Total qualified labor hours" means the reimbursed payment
14 amount for hours of work performed within the state by the employees
15 of a qualified federal contractor or the employees of a
16 subcontractor of a qualified federal contractor and which are
17 required for the full performance of a qualified federal contract;
18 and

19 17. "Qualified labor rate" means the fully reimbursed labor
20 rate paid through a qualified federal contract for qualified labor
21 hours to the qualified federal contractor or subcontractor.

22 B. The Incentive Approval Committee is hereby created and shall
23 consist of the Director of State Finance, the Director of the
24 Department and one member of the Oklahoma Tax Commission appointed

1 by the Tax Commission, or a designee from each agency approved by
2 such member. It shall be the duty of the Committee to determine:

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

9 2. If an establishment would have been defined as a "basic
10 industry" prior to the amendments to this section to convert from
11 SIC Codes to NAICS Codes. If the Committee so determines, the
12 establishment shall be considered as a "basic industry" for purposes
13 of the Oklahoma Quality Jobs Program Act; and

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

18 C. For an establishment defined as a "basic industry" pursuant
19 to division (4) of subparagraph a of paragraph 1 of subsection A of
20 this section, the Incentive Approval Committee shall consist of the
21 members provided by subsection B of this section and the Executive
22 Director of the Oklahoma Center for the Advancement of Science and
23 Technology, or a designee from the Center appointed by the Executive
24 Director.

1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 3604.1-1A of Title 68, unless
3 there is created a duplication in numbering, reads as follows:

4 A. An establishment which meets the qualifications specified in
5 division (14), (15), (16) or (17) of subparagraph a of paragraph 1
6 of subsection A of Section 3603 of Title 68 of the Oklahoma Statutes
7 may receive quarterly incentive payments for a ten-year period from
8 the Oklahoma Tax Commission pursuant to the provisions of the
9 Oklahoma Quality Jobs Program Act. The amount of such payments
10 shall be equal to the net benefit rate prescribed by subsection D of
11 this section multiplied by the actual gross payroll of new direct
12 jobs for a calendar quarter as verified by the Oklahoma Employment
13 Security Commission.

14 B. In order to receive incentive payments, an establishment
15 shall apply to the Oklahoma Department of Commerce. The application
16 shall be on a form prescribed by the Department and shall contain
17 such information as may be required by the Department to determine
18 if the applicant is qualified. An establishment may apply for an
19 effective date for a project, which shall not be more than twenty-
20 four (24) months from the date the application is submitted to the
21 Department.

22 C. In order to qualify to receive such payments, the
23 establishment applying shall be required to:

24

1 1. Be engaged in an activity described by division (14), (15),
2 (16) or (17) of subparagraph a of paragraph 1 of subsection A of
3 Section 3603 of Title 68 of the Oklahoma Statutes;

4 2. Have an annual gross payroll for new direct jobs projected
5 by the Department to equal or exceed One Hundred Thousand Dollars
6 (\$100,000.00) within three (3) years of the first complete calendar
7 quarter following the start date; and

8 3. Have a number of full-time-equivalent employees subject to
9 the tax imposed by Section 2355 of Title 68 of the Oklahoma Statutes
10 and working an annual average of thirty (30) or more hours per week
11 in new direct jobs located in this state equal to or in excess of
12 eighty percent (80%) of the total number of new direct jobs.

13 D. The Department of Commerce shall use a net benefit rate of:

14 1. Three percent (3.0%) for an establishment described by
15 division (14) of subparagraph a of paragraph 1 of subsection A of
16 Section 3603 of Title 68 of the Oklahoma Statutes if the gross
17 revenues of the establishment are more than Five Hundred Thousand
18 Dollars (\$500,000.00) per year;

19 2. Three and five-tenths percent (3.5%) for an establishment
20 described by division (14) of subparagraph a of paragraph 1 of
21 subsection A of Section 3603 of Title 68 of the Oklahoma Statutes if
22 the gross revenues of the establishment are not more than Five
23 Hundred Thousand Dollars (\$500,000.00) per year and not less than
24 Four Hundred Thousand Dollars (\$400,000.00) per year;

1 3. Four percent (4%) for an establishment described by division
2 (14) of subparagraph a of paragraph 1 of subsection A of Section
3 3603 of Title 68 of the Oklahoma Statutes if the gross revenues of
4 the establishment are not more than Four Hundred Thousand Dollars
5 (\$400,000.00) per year and not less than Three Hundred Thousand
6 Dollars (\$300,000.00) per year;

7 4. Four and five-tenths percent (4.5%) for an establishment
8 described by division (14) of subparagraph a of paragraph 1 of
9 subsection A of Section 3603 of Title 68 of the Oklahoma Statutes if
10 the gross revenues of the establishment are not more than Three
11 Hundred Thousand Dollars (\$300,000.00) per year and not less than
12 Two Hundred Thousand Dollars (\$200,000.00) per year;

13 5. Five percent (5%) for an establishment described by division
14 (14) of subparagraph a of paragraph 1 of subsection A of Section
15 3603 of Title 68 of the Oklahoma Statutes if the gross revenues of
16 the establishment are less than Two Hundred Thousand Dollars
17 (\$200,000.00) per year; and

18 6. Three percent (3.0%) percent for an establishment described
19 by divisions (15), (16) and (17) of subparagraph a of paragraph 1 of
20 subsection A of Section 3603 of Title 68 of the Oklahoma Statutes
21 regardless of gross annual revenue.

22 E. The Department shall determine if the applicant is qualified
23 to receive incentive payments.

1 F. If the applicant is determined to be qualified by the
2 Department, the Department shall conduct a cost/benefit analysis to
3 determine the estimated net direct state benefits and the net
4 benefit rate applicable for a ten-year period beginning with the
5 first complete calendar quarter following the start date as
6 prescribed by subsection B of this section. In conducting such
7 cost/benefit analysis, the Department shall consider quantitative
8 factors, such as the anticipated level of new tax revenues to the
9 state along with the added cost to the state of providing services,
10 and such other criteria as deemed appropriate by the Department. In
11 no event shall incentive payments, cumulatively, exceed the
12 estimated net direct state benefits.

13 G. Upon approval of such an application, the Department shall
14 notify the Tax Commission and shall provide it with a copy of the
15 contract and the results of the cost/benefit analysis. The Tax
16 Commission may require the qualified establishment to submit such
17 additional information as may be necessary to administer the
18 provisions of the Oklahoma Quality Jobs Program Act. The approved
19 establishment shall file quarterly claims with the Tax Commission
20 and shall continue to file such quarterly claims during the ten-year
21 incentive period to show its continued eligibility for incentive
22 payments, as provided in Section 3606 of Title 68 of the Oklahoma
23 Statutes, or until it is no longer qualified to receive incentive
24 payments. The establishment may be audited by the Tax Commission to

1 verify such eligibility. Once the establishment is approved, an
2 agreement shall be deemed to exist between the establishment and the
3 State of Oklahoma, requiring the continued incentive payment to be
4 made as long as the establishment retains its eligibility as defined
5 in and established pursuant to this section and Sections 3603 and
6 3606 of Title 68 of the Oklahoma Statutes and within the limitations
7 contained in the Oklahoma Quality Jobs Program Act, which existed at
8 the time of such approval.

9 SECTION 3. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 2357.701 of Title 68, unless
11 there is created a duplication in numbering, reads as follows:

12 A. As used in this section:

13 1. "EBT" means an electronic benefits transfer system operated
14 by an authorized agency of the United States government;

15 2. "EBT device" means a point of sale terminal at which a
16 consumer can authorize payment from a federal benefit account to the
17 grocery store;

18 3. "Grocery store" means an establishment classified in the
19 NAICS Manual under U.S. Industry No. 445110; and

20 4. "Qualified cost" means the actual expenditure incurred by a
21 grocery store for the purchase of an EBT device, but not to exceed
22 Two Thousand Five Hundred Dollars (\$2,500.00) for purposes of the
23 income tax credit authorized by this section.

24

1 B. For taxable years beginning after December 31, 2010, there
2 shall be allowed a credit against the tax imposed pursuant to
3 Section 2355 of Title 68 of the Oklahoma Statutes in the amount of
4 fifty percent (50%) of the qualified cost of an EBT device installed
5 by an eligible grocery store on its premises for use by its
6 customers.

7 C. The credit authorized by this section may not be used to
8 reduce the liability of a taxpayer to less than zero (0).

9 D. To the extent not used, the credit authorized by this
10 section may be carried over, in order, to each of the five (5)
11 succeeding taxable years.

12 SECTION 4. Sections 1 and 2 of this act shall become effective
13 July 1, 2010.

14 SECTION 5. Section 3 of this act shall become effective January
15 1, 2011.

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

20

21 52-2-9435 MAH 01/13/10

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