

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

SENATE BILL 210

By: Dahm

AS INTRODUCED

An Act relating to income tax; providing exemption for petroleum refinery placed in service after certain date; limiting exemption to certain tax years; stating requirements for qualification; requiring determination by the Oklahoma Tax Commission; requiring annual application; prohibiting subsequent exemption for establishments that fail to qualify; requiring the Commission to prescribe forms and promulgate rules; amending 68 O.S. 2021, Section 2357.4, which relates to tax credit for investments in qualified depreciable property and a net increase in full-time-equivalent employees; providing credit amount for certain property primarily engaged in the refining of petroleum; amending 68 O.S. 2021, Section 3603, which relate to the quality jobs program; adding net benefit rate limit for certain industry; updating statutory language; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2357.204A of Title 68, unless there is created a duplication in numbering, reads as follows:

A. For tax years 2024 through 2034, revenues generated from the operation of a newly constructed establishment in this state placed in service after the effective date of this act, primarily engaged

1 in the refining of crude petroleum into refined petroleum classified
2 in the NAICS Manual under Industry No. 324110 shall be exempt from
3 the tax imposed by Section 2355 of Title 68 of the Oklahoma Statutes
4 for the first five (5) years of operations.

5 B. To qualify for the exemption provided in subsection A of
6 this section, an establishment shall meet the following
7 requirements:

8 1. Employment of at least one hundred (100) full-time-
9 equivalent employees, as certified by the Oklahoma Employment
10 Security Commission, for the entire tax year;

11 2. Payment of wages or salaries at a wage that equals or
12 exceeds the average wage requirements in the Oklahoma Quality Jobs
13 Program Act, Section 3601 et seq. of Title 68 of the Oklahoma
14 Statutes; and

15 3. Be primarily engaged in the processing of liquid fuel from
16 crude oil or qualified fuels. No exemption shall be allowed for any
17 refinery whose primary purpose is for use as a topping plant,
18 asphalt plant, lube oil facility, or crude or product terminal.

19 C. Eligibility for an establishment pursuant to this section
20 for each tax year shall be determined by the Oklahoma Tax
21 Commission, upon the annual filing of an application provided by the
22 Tax Commission stating that the establishment qualifies and
23 containing information required by the Tax Commission.

1 D. An establishment that fails to qualify for the exemption in
2 any of the first five (5) years of operations shall not be eligible
3 for the exemption provided in this section in any subsequent tax
4 year.

5 E. The Tax Commission shall prescribe forms and promulgate
6 rules to administer the provisions of this section.

7 SECTION 2. AMENDATORY 68 O.S. 2021, Section 2357.4, is
8 amended to read as follows:

9 Section 2357.4. A. Except as otherwise provided in subsection
10 F of Section 3658 of this title and in subsections J and K of this
11 section, for taxable years beginning after December 31, 1987, there
12 shall be allowed a credit against the tax imposed by Section 2355 of
13 this title for:

14 1. Investment in qualified depreciable property placed in
15 service during those years for use in a manufacturing operation, as
16 defined in Section 1352 of this title, which has received a
17 manufacturer exemption permit pursuant to the provisions of Section
18 1359.2 of this title or a qualified aircraft maintenance or
19 manufacturing facility as defined in Section 1357 of this title in
20 this state or a qualified web search portal as defined in Section
21 1357 of this title; or

22 2. A net increase in the number of full-time-equivalent
23 employees in a manufacturing operation, as defined in Section 1352
24 of this title, which has received a manufacturer exemption permit

1 pursuant to the provisions of Section 1359.2 of this title or a
2 qualified aircraft maintenance or manufacturing facility defined in
3 Section 1357 of this title in this state or in a qualified web
4 search portal as defined in Section 1357 of this title including
5 employees engaged in support services.

6 B. Except as otherwise provided in subsection F of Section 3658
7 of this title and in subsections J and K of this section, for
8 taxable years beginning after December 31, 1998, there shall be
9 allowed a credit against the tax imposed by Section 2355 of this
10 title for:

11 1. Investment in qualified depreciable property with a total
12 cost equal to or greater than Forty Million Dollars (\$40,000,000.00)
13 within three (3) years from the date of initial qualifying
14 expenditure and placed in service in this state during those years
15 for use in the manufacture of products described by any Industry
16 Number contained in Division D of Part I of the Standard Industrial
17 Classification (SIC) Manual, latest revision; or

18 2. A net increase in the number of full-time-equivalent
19 employees in this state engaged in the manufacture of any goods
20 identified by any Industry Number contained in Division D of Part I
21 of the Standard Industrial Classification (SIC) Manual, latest
22 revision, if the total cost of qualified depreciable property placed
23 in service by the business entity within the state equals or exceeds
24

1 Forty Million Dollars (\$40,000,000.00) within three (3) years from
2 the date of initial qualifying expenditure.

3 C. The business entity may claim the credit authorized by
4 subsection B of this section for expenditures incurred or for a net
5 increase in the number of full-time-equivalent employees after the
6 business entity provides proof satisfactory to the Oklahoma Tax
7 Commission that the conditions imposed pursuant to paragraph 1 or
8 paragraph 2 of subsection B of this section have been satisfied.

9 D. If a business entity fails to expend the amount required by
10 paragraph 1 or paragraph 2 of subsection B of this section within
11 the time required, the business entity may not claim the credit
12 authorized by subsection B of this section but shall be allowed to
13 claim a credit pursuant to subsection A of this section if the
14 requirements of subsection A of this section are met with respect to
15 the investment in qualified depreciable property or net increase in
16 the number of full-time-equivalent employees.

17 E. The credit provided for in subsection A of this section, if
18 based upon investment in qualified depreciable property, shall not
19 be allowed unless the investment in qualified depreciable property
20 is at least Fifty Thousand Dollars (\$50,000.00). The credit
21 provided for in subsection A or B of this section shall not be
22 allowed if the applicable investment is the direct cause of a
23 decrease in the number of full-time-equivalent employees. Qualified
24 property shall be limited to machinery, fixtures, equipment,

1 buildings or substantial improvements thereto, placed in service in
2 this state during the taxable year. The taxable years for which the
3 credit may be allowed if based upon investment in qualified
4 depreciable property shall be measured from the year in which the
5 qualified property is placed in service. If the credit provided for
6 in subsection A or B of this section is calculated on the basis of
7 the cost of the qualified property, the credit shall be allowed in
8 each of the four (4) subsequent years. If the qualified property on
9 which a credit has previously been allowed is acquired from a
10 related party, the date such property is placed in service by the
11 transferor shall be considered to be the date such property is
12 placed in service by the transferee, for purposes of determining the
13 aggregate number of years for which credit may be allowed.

14 F. The credit provided for in subsection A or B of this
15 section, if based upon an increase in the number of full-time-
16 equivalent employees, shall be allowed in each of the four (4)
17 subsequent years only if the level of new employees is maintained in
18 the subsequent year. In calculating the credit by the number of new
19 employees, only those employees whose paid wages or salary were at
20 least Seven Thousand Dollars (\$7,000.00) during each year the credit
21 is claimed shall be included in the calculation. Provided, that the
22 first year a credit is claimed for a new employee, such employee may
23 be included in the calculation notwithstanding paid wages of less
24 than Seven Thousand Dollars (\$7,000.00) if the employee was hired in

1 the last three quarters of the tax year, has wages or salary which
2 will result in annual paid wages in excess of Seven Thousand Dollars
3 (\$7,000.00) and the taxpayer submits an affidavit stating that the
4 employee's position will be retained in the following tax year and
5 will result in the payment of wages in excess of Seven Thousand
6 Dollars (\$7,000.00). The number of new employees shall be
7 determined by comparing the monthly average number of full-time
8 employees subject to Oklahoma income tax withholding for the final
9 quarter of the taxable year with the corresponding period of the
10 prior taxable year, as substantiated by such reports as may be
11 required by the Tax Commission.

12 G. The credit allowed by subsection A of this section shall be
13 the greater amount of either:

14 1. One percent (1%) of the cost of the qualified property in
15 the year the property is placed in service; or

16 2. Five Hundred Dollars (\$500.00) for each new employee. No
17 credit shall be allowed in any taxable year for a net increase in
18 the number of full-time-equivalent employees if such increase is a
19 result of an investment in qualified depreciable property for which
20 an income tax credit has been allowed as authorized by this section.

21 H. The credit allowed by subsection B of this section shall be
22 the greater amount of either:

23 1. Two percent (2%) of the cost of the qualified property in
24 the year the property is placed in service. Provided, for property

1 placed in service after the effective date of this act that is
2 primarily engaged in the refining of crude petroleum into refined
3 petroleum classified in the NAICS Manual under Industry No. 324110,
4 the credit allowed shall be three percent (3%) of the cost of the
5 qualified property; or

6 2. One Thousand Dollars (\$1,000.00) for each new employee.

7 No credit shall be allowed in any taxable year for a net
8 increase in the number of full-time-equivalent employees if such
9 increase is a result of an investment in qualified depreciable
10 property for which an income tax credit has been allowed as
11 authorized by this section.

12 I. Except as provided by subsection G of Section 3658 of this
13 title, any credits allowed but not used in any taxable year may be
14 carried over in order as follows:

15 1. To each of the four (4) years following the year of
16 qualification;

17 2. To the extent not used in those years in order to each of
18 the fifteen (15) years following the initial five-year period;

19 3. If a C corporation that otherwise qualified for the credits
20 under subsection A of this section subsequently changes its
21 operating status to that of a pass-through entity which is being
22 treated as the same entity for federal tax purposes, the credits
23 will continue to be available as if the pass-through entity had
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1 originally qualified for the credits subject to the limitations of
2 this section;

3 4. To the extent not used in paragraphs 1 and 2 of this
4 subsection, such credits from qualified depreciable property placed
5 in service on or after January 1, 2000, may be utilized in any
6 subsequent tax years after the initial twenty-year period; and

7 5. Provided, for tax years beginning on or after January 1,
8 2016, and ending on or before December 31, 2018, the amount of
9 credits available as an offset in a taxable year shall be limited to
10 the percentage calculated by the Tax Commission pursuant to the
11 provisions of subsection L of this section.

12 J. No credit otherwise authorized by the provisions of this
13 section may be claimed for any event, transaction, investment,
14 expenditure or other act occurring on or after July 1, 2010, for
15 which the credit would otherwise be allowable until the provisions
16 of this subsection shall cease to be operative on July 1, 2012.
17 Beginning July 1, 2012, the credit authorized by this section may be
18 claimed for any event, transaction, investment, expenditure or other
19 act occurring on or after July 1, 2010, according to the provisions
20 of this section; provided, credits accrued during the period from
21 July 1, 2010, through June 30, 2012, shall be limited to a period of
22 two (2) taxable years. The credit shall be limited in each taxable
23 year to fifty percent (50%) of the total amount of the accrued
24 credit. Any tax credits which accrue during the period of July 1,

1 2010, through June 30, 2012, may not be claimed for any period prior
2 to the taxable year beginning January 1, 2012. No credits which
3 accrue during the period of July 1, 2010, through June 30, 2012, may
4 be used to file an amended tax return for any taxable year prior to
5 the taxable year beginning January 1, 2012.

6 K. Beginning January 1, 2017, except with respect to tax
7 credits allowed from investment or job creation occurring prior to
8 January 1, 2017, the credits authorized by this section shall not be
9 allowed for investment or job creation in electric power generation
10 by means of wind as described by the North American Industry
11 Classification System, No. 221119.

12 L. For tax years beginning on or after January 1, 2016, and
13 ending on or before December 31, 2018, the total amount of credits
14 authorized by this section used to offset tax shall be adjusted
15 annually to limit the annual amount of credits to Twenty-five
16 Million Dollars (\$25,000,000.00). The Tax Commission shall annually
17 calculate and publish a percentage by which the credits authorized
18 by this section shall be reduced so the total amount of credits used
19 to offset tax does not exceed Twenty-five Million Dollars
20 (\$25,000,000.00) per year. The formula to be used for the
21 percentage adjustment shall be Twenty-five Million Dollars
22 (\$25,000,000.00) divided by the credits used to offset tax in the
23 second preceding year.

1 M. Pursuant to subsection L of this section, in the event the
2 total tax credits authorized by this section exceed Twenty-five
3 Million Dollars (\$25,000,000.00) in any calendar year, the Tax
4 Commission shall permit any excess over Twenty-five Million Dollars
5 (\$25,000,000.00) but shall factor such excess into the percentage
6 adjustment formula for subsequent years.

7 SECTION 3. AMENDATORY 68 O.S. 2021, Section 3603, is
8 amended to read as follows:

9 Section 3603. A. As used in the Oklahoma Quality Jobs Program
10 Act:

11 1. a. "Basic industry" means:

12 (1) those manufacturing activities defined or
13 classified in the NAICS Manual under Industry
14 Sector Nos. 31, 32 and 33, Industry Group No.
15 5111 or Industry No. 11331,

16 (2) those electric power generation, transmission and
17 distribution activities defined or classified in
18 the NAICS Manual under U.S. Industry Nos. 221111
19 through 221122, if:

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

23 (b) the exempt wholesale generator facility
24 consumes from sources located within the
25

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

8 (c) the exempt wholesale generator facility
9 sells to purchasers located outside the
10 state for consumption in activities located
11 outside the state at least ninety percent
12 (90%) of the total electrical energy output
13 which qualifies for the specialized
14 treatment provided by the Energy Policy Act
15 of 1992, P.L. 102-486, 106 Stat. 2776, as
16 amended, and federal regulations adopted
17 pursuant thereto, and

18 (d) the facility is constructed on or after July
19 1, 1996,

20 (3) those administrative and facilities support
21 service activities defined or classified in the
22 NAICS Manual under Industry Group Nos. 5611 and
23 5612, Industry Nos. 51821, 519130, 52232 and
24 56142 or U.S. Industry Nos. 524291 and 551114,

1 those other support activities for air
2 transportation defined or classified in the NAICS
3 Manual under Industry Group No. 488190, and those
4 support, repair, and maintenance service
5 activities for the wind industry defined or
6 classified in the NAICS Manual under Industry
7 Group No. 811310,

8 (4) those professional, scientific, and technical
9 service activities defined or classified in the
10 NAICS Manual under U.S. Industry Nos. 541710 and
11 541380,

12 (5) distribution centers for retail or wholesale
13 businesses defined or classified in the NAICS
14 Manual under Sector No. 42, if forty percent
15 (40%) or more of the inventory processed through
16 such warehouse is shipped out-of-state,

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

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

- 3 (i) the corporate headquarters of an
4 establishment classified therein, and
5 (ii) a facility or facilities at which
6 reservations for transportation
7 provided by such an establishment are
8 processed, whether such services are
9 performed by employees of the
10 establishment, by employees of a
11 subsidiary of or other entity
12 affiliated with the establishment or by
13 employees of an entity with whom the
14 establishment has contracted for the
15 performance of such services; provided,
16 this provision shall not disqualify an
17 establishment which uses an out-of-
18 state entity or employees for some
19 reservations services, or

- 20 (b) those air transportation activities defined
21 or classified in the NAICS Manual under
22 Industry Group No. 4811, if an establishment
23 classified therein has or will have within
24 one (1) year sales of at least seventy-five

1 percent (75%) of its total sales, as
2 determined by the Incentive Approval
3 Committee pursuant to the provisions of
4 subsection B of this section, to out-of-
5 state customers or buyers, to in-state
6 customers or buyers if the product or
7 service is resold by the purchaser to an
8 out-of-state customer or buyer for ultimate
9 use, or to the federal government,

10 (8) flight training services activities defined or
11 classified in the NAICS Manual under U.S.
12 Industry Group No. 611512, which for purposes of
13 the Oklahoma Quality Jobs Program Act shall
14 include new direct jobs for which gross payroll
15 existed on or after January 1, 2003, as
16 identified in the NAICS Manual,

17 (9) the following, if an establishment classified
18 therein has or will have within one (1) year
19 sales of at least seventy-five percent (75%) of
20 its total sales, as determined by the Incentive
21 Approval Committee pursuant to the provisions of
22 subsection B of this section, to out-of-state
23 customers or buyers, to in-state customers or
24 buyers if the product or service is resold by the

1 purchaser to an out-of-state customer or buyer
2 for ultimate use, or to the federal government:

- 3 (a) those transportation and warehousing
4 activities defined or classified in the
5 NAICS Manual under Industry Subsector No.
6 493, if not otherwise listed in this
7 paragraph, Industry Subsector Nos. 482 and
8 484 and Industry Group Nos. 4884 through
9 4889,
- 10 (b) those passenger transportation activities
11 defined or classified in the NAICS Manual
12 under Industry Nos. 561510 and 561599,
- 13 (c) those freight or cargo transportation
14 activities defined or classified in the
15 NAICS Manual under Industry No. 541614,
- 16 (d) those insurance activities defined or
17 classified in the NAICS Manual under
18 Industry Group No. 5241,
- 19 (e) those services to dwellings and other
20 buildings, as defined or classified in the
21 NAICS Manual under Industry Group No. 5617,
22 excluding U.S. Industry Nos. 561730, 56171,
23 56172, 56174 and 56179,
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- 1 (f) those equipment rental and leasing
2 activities defined or classified in the
3 NAICS Manual under Industry Group No. 5324,
4 (g) those information technology and other
5 computer-related service activities defined
6 or classified in the NAICS Manual under
7 Industry Group Nos. 5112, 5182, 5191 and
8 5415,
9 (h) those business support service activities
10 defined or classified in the NAICS Manual
11 under U.S. Industry Nos. 561410 through
12 561430, excluding 56143, and Industry No.
13 51911,
14 (i) those medical and diagnostic laboratory
15 activities defined or classified in the
16 NAICS Manual under Industry Group No. 6215,
17 (j) those professional, scientific and technical
18 service activities defined or classified in
19 the NAICS Manual under Industry Group Nos.
20 5412, 5414, 5415, 5416 and 5417, Industry
21 Nos. 54131, 54133, 54136 and 54137, and U.S.
22 Industry No. 541990, if not otherwise listed
23 in this paragraph,
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- 1 (k) those communication service activities
2 defined or classified in the NAICS Manual
3 under Industry Nos. 51741 and 51791,
4 (l) those refuse systems activities defined or
5 classified in the NAICS Manual under
6 Industry Group No. 5622, provided that the
7 establishment is primarily engaged in the
8 capture and distribution of methane gas
9 produced within a landfill,
10 (m) general wholesale distribution of groceries,
11 defined or classified in the NAICS Manual
12 under Industry Group Nos. 4244 and 4245,
13 (n) those activities relating to processing of
14 insurance claims, defined or classified in
15 the NAICS Manual under U.S. Industry Nos.
16 524210 and 524292; provided, activities
17 described in U.S. Industry Nos. 524210 and
18 524292 in the NAICS Manual other than
19 processing of insurance claims shall not be
20 included for purposes of this subdivision,
21 (o) those agricultural activities classified in
22 the NAICS Manual under U.S. Industry Nos.
23 112120 and 112310,
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- 1 (p) those professional organization activities
2 classified in the NAICS Manual under U.S.
3 Industry No. 813920,
4 (q) alternative energy structure construction
5 classified in the NAICS Manual under U.S.
6 Industry No. 237130,
7 (r) solar reflective coating application
8 classified in the NAICS Manual under U.S.
9 Industry No. 238160,
10 (s) solar heating equipment installation
11 classified in the NAICS Manual under U.S.
12 Industry No. 238220,
13 (t) those wired telecommunications carriers
14 classified in the NAICS Manual under U.S.
15 Industry No. 517110, and
16 (u) those securities, commodity contracts and
17 investment activities classified in the
18 NAICS Manual under Industry Subsector No.
19 523,

- 20 (10) those activities related to extraction or
21 pipeline transportation of petroleum, natural gas
22 or refined petroleum products, defined or
23 classified in the NAICS Manual under Industry
24 Group No. 2111, 213111, 213112 or 486, subject to
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1 the limitations provided in paragraph 3 of this
2 subsection and paragraph 3 of subsection B of
3 this section,

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

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

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

3 (14) those support activities for rail transportation
4 and those support activities for water
5 transportation defined or classified in the NAICS
6 Manual under U.S. Industry Nos. 4882 and 4883.

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

- 16 (1) not more than fifty percent (50%) of the premium
17 shall be paid by the employee,
18 (2) coverage for basic hospital care,
19 (3) coverage for physician care,
20 (4) coverage for mental health care,
21 (5) coverage for substance abuse treatment,
22 (6) coverage for prescription drugs, and
23 (7) coverage for prenatal care;

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

- 3 a. beneficial ownership of more than fifty percent (50%)
4 in value and more than fifty percent (50%) in voting
5 power of the outstanding equity securities of the
6 transferred establishment, or
7 b. more than fifty percent (50%) in value of the assets
8 of an establishment.

9 A transferor shall be treated as related to a transferee if more
10 than fifty percent (50%) of the voting interests of the transferor
11 and transferee are owned, directly or indirectly, by the other or
12 are owned, directly or indirectly, by the same person or persons,
13 unless such transferred establishment has an outstanding class of
14 equity securities registered under Sections 12(b) or 15(d) of the
15 Securities Exchange Act of 1934, as amended, in which event the
16 transferor and transferee will be treated as unrelated; provided, an
17 establishment applying for the Oklahoma Quality Jobs Program Act as
18 a result of a change-in-control event is required to apply within
19 one hundred eighty (180) days of the change-in-control event to
20 qualify for consideration. An establishment entering the Oklahoma
21 Quality Jobs Program Act as the result of a change-in-control event
22 shall be required to maintain a level of new direct jobs as agreed
23 to in its contract with the Oklahoma Department of Commerce and to
24 pay new direct jobs an average annualized wage which equals or

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

22 3. "New direct job":

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

1 business located in the state and owns real or
2 personal property having a market value of at least
3 One Million Dollars (\$1,000,000.00) located in the
4 state; provided, that if an application of an
5 establishment is approved by the Oklahoma Department
6 of Commerce after a change-in-control event and the
7 Director of the Oklahoma Department of Commerce
8 determines that the jobs located at such establishment
9 are likely to leave the state, "new direct job" shall
10 include employment that existed in this state prior to
11 the date of application which is retained in this
12 state by the new establishment following a change in
13 control event, if such job otherwise qualifies as a
14 new direct job, and

- 15 b. shall include full-time-equivalent employment in this
16 state of employees who are employed by an employment
17 agency or similar entity other than the establishment
18 which has qualified to receive an incentive payment
19 and who are leased or otherwise provided under
20 contract to the qualified establishment, if such job
21 did not exist in this state prior to the date of
22 approval by the Department of the application of the
23 establishment or the job otherwise qualifies as a new
24 direct job following a change-in-control event. A job

1 shall be deemed to exist in this state prior to
2 approval of an application if the activities and
3 functions for which the particular job exists have
4 been ongoing at any time within six (6) months prior
5 to such approval. With respect to establishments
6 defined in division (10) of subparagraph a of
7 paragraph 1 of this subsection, new direct jobs shall
8 be limited to those jobs directly comprising the
9 corporate headquarters of or directly relating to
10 manufacturing, maintenance, administrative, financial,
11 engineering, surveying, geological or geophysical
12 services performed by the establishment. Under no
13 circumstances shall employment relating to field
14 services be considered new direct jobs;

15 4. "Estimated direct state benefits" means the tax revenues
16 projected by the Department to accrue to the state as a result of
17 new direct jobs;

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

- 21 a. the costs of education of new state resident children,
- 22 b. the costs of public health, public safety and
23 transportation services to be provided to new state
24 residents,

1 c. the costs of other state services to be provided to
2 new state residents, and

3 d. the costs of other state services;

4 6. "Estimated net direct state benefits" means the estimated
5 direct state benefits less the estimated direct state costs;

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

8 a. except as otherwise provided in this paragraph, the
9 net benefit rate may be variable and shall not exceed
10 five percent (5%),

11 b. the net benefit rate shall not exceed six percent (6%)
12 in connection with an establishment which is owned and
13 operated by an entity which has been awarded a United
14 States Department of Defense contract for which:

15 (1) bids were solicited and accepted by the United
16 States Department of Defense from facilities
17 located outside this state,

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

20 (3) the average annual salary, excluding benefits
21 which are not subject to Oklahoma income taxes,
22 for new direct jobs created as a direct result of
23 the awarding of the contract is projected by the
24 Oklahoma Department of Commerce to equal or

1 exceed Forty Thousand Dollars (\$40,000.00) within
2 three (3) years of the date of the first
3 incentive payment,

4 c. except as otherwise provided in subparagraph d of this
5 paragraph, in no event shall incentive payments,
6 cumulatively, exceed the estimated net direct state
7 benefits,

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

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

13 (2) in a county in which:

14 (a) the per capita personal income, as
15 determined by the Department, is eighty-five
16 percent (85%) or less of the statewide
17 average per capita personal income,

18 (b) the population has decreased over the
19 previous ten (10) years, as determined by
20 the Oklahoma Department of Commerce based on
21 the most recent U.S. Department of Commerce
22 data, or

23 (c) the unemployment rate exceeds the lesser of
24 five percent (5%) or two percentage points
25

1 above the state average unemployment rate as
2 certified by the Oklahoma Employment
3 Security Commission,

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

6 (1) is, as of the date of application, receiving
7 incentive payments pursuant to the Oklahoma
8 Quality Jobs Program Act and has been receiving
9 such payments for at least one (1) year prior to
10 the date of application, and

11 (2) expands its operations in this state by creating
12 additional new direct jobs which pay average
13 annualized wages which equal or exceed one
14 hundred fifty percent (150%) of the average
15 annualized wages of new direct jobs on which
16 incentive payments were received during the
17 preceding calendar year,

18 f. with respect to an establishment defined or classified
19 in the NAICS Manual under U.S. Industry No. 711211
20 (2007 version) or any establishment defined or
21 classified in the NAICS Manual as a U.S. Industry
22 Number which is not included within the definition of
23 "basic industry" as such term is defined in this
24 section on April 17, 2008, the net benefit rate shall

1 not exceed the highest rate of income tax imposed upon
2 the Oklahoma taxable income of individuals pursuant to
3 subparagraph (g) or subparagraph (h), as applicable,
4 of paragraph 1 and paragraph 2 of subsection B of
5 Section 2355 of this title. Any change in such
6 highest rate of individual income tax imposed pursuant
7 to the provisions of Section 2355 of this title shall
8 be applicable to the computation of incentive payments
9 to an establishment as described by this subparagraph
10 and shall be effective for purposes of incentive
11 payments based on payroll paid by such establishment
12 on or after January 1 of any applicable year for which
13 the net benefit rate is modified as required by this
14 subparagraph, ~~and~~

15 g. the net benefit rate shall not exceed six percent (6%)
16 in connection with an establishment which employs
17 United States military veterans in at least ten
18 percent (10%) of its gross payroll. The net benefit
19 rate for an establishment which employs United States
20 military veterans in at least ten percent (10%) of its
21 payroll shall not be lower than five percent (5%), and

22 h. with respect to a petroleum refinery establishment
23 placed in service after the effective date of this
24 act, defined or classified in the NAICS Manual under

1 U.S. Industry No. 324110, the net benefit rate shall
2 not exceed six percent (6%).

3 Incentive payments made pursuant to the provisions of this
4 subparagraph shall be based upon payroll associated with such new
5 direct jobs. For purposes of this subparagraph, the amount of
6 health insurance premiums or other benefits paid by the
7 establishment shall not be included for purposes of computation of
8 the average annualized wage;

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

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

- 1 (1) within three (3) years of the first complete
2 calendar quarter following the start date, the
3 entity must have a minimum payroll of Two Million
4 Five Hundred Thousand Dollars (\$2,500,000.00) and
5 the subunit must also have or will have a minimum
6 payroll of Two Million Five Hundred Thousand
7 Dollars (\$2,500,000.00),
- 8 (2) the subunit is engaged in an activity or service
9 or produces a product which is demonstratively
10 independent and separate from the entity's other
11 activities, services or products and could be
12 conducted or produced in the absence of any other
13 activity, service or production of the entity,
- 14 (3) has an accounting system capable of tracking or
15 facilitating an audit of the subunit's payroll,
16 expenses, revenue and production. Limited
17 interunit overlap of administrative and
18 purchasing functions shall not disqualify a
19 subunit from consideration as an establishment by
20 the Department,
- 21 (4) the entity has not previously had a subunit
22 determined to be an establishment pursuant to
23 this section; provided, the restriction set forth
24 in this division shall not apply to subunits

1 which qualify pursuant to the provisions of
2 subparagraph b of paragraph 7 of this subsection,
3 and

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

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

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

20 11. "Qualified federal contract" means a contract between an
21 agency or instrumentality of the United States government, including
22 but not limited to the Department of Defense or any branch of the
23 United States Armed Forces, but exclusive of any contract performed
24 for the Federal Emergency Management Agency as a direct result of a

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

1 12. "Qualified federal contractor verifier" means a nonprofit
2 entity organized under the laws of ~~the State of Oklahoma~~ this state,
3 having an affiliation with a comprehensive university which is part
4 of The Oklahoma State System of Higher Education, and having the
5 following characteristics:

- 6 a. established multiyear classified and unclassified
7 indefinite-delivery/indefinite-quantity federal
8 contract vehicles in excess of Fifty Million Dollars
9 (\$50,000,000.00),
- 10 b. current capability to sponsor and maintain personnel
11 security clearances and authorized by the federal
12 government to handle and perform classified work up to
13 the Top Secret Sensitive Compartmented Information
14 levels,
- 15 c. at least one on-site federally certified Sensitive
16 Compartmented Information Facility,
- 17 d. on-site secure mass data storage complex with the
18 capability of isolating, segregating and protecting
19 corporate proprietary and classified information,
- 20 e. trusted agent status by maintaining no ownership of,
21 vested interest in, nor royalty production from any
22 intellectual property,
- 23 f. at least one hundred thousand (100,000) square feet of
24 configurable laboratory and support space,

- 1 g. the direct access to restricted air space through a
2 formalized memorandum of agreement with the Department
3 of Defense,
4 h. at least five thousand (5,000) acres available for
5 outdoor testing and training facilities, and
6 i. the ability to house state-of-the-art surety
7 facilities, including chemical, biological,
8 radiological, explosives, electronics, and unmanned
9 systems laboratories and ranges;

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

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

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

22 16. "Total qualified labor hours" means the reimbursed payment
23 amount for hours of work performed by the State of Oklahoma
24 workforce of a qualified federal contractor or the State of Oklahoma

1 workforce of a subcontractor of a qualified federal contractor and
2 which are required for the full performance of a qualified federal
3 contract;

4 17. "Qualified labor rate" means the fully reimbursed labor
5 rate paid through a qualified federal contract for qualified labor
6 hours to the qualified federal contractor or subcontractor;

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

- 8 a. maintaining a prime contract with the federal
9 government as defined in paragraph 11 of this
10 subsection,
- 11 b. providing notice of intent to apply to the Department
12 within one hundred eighty (180) days of July 1, 2010,
13 or one hundred eighty (180) days of the date of the
14 award of a qualified federal contract or award of a
15 new qualified subcontract under an existing qualified
16 federal contract, and
- 17 c. adding substantively to the contract by performing at
18 least eight percent (8%) of the total labor whether
19 qualified and nonqualified labor as determined by the
20 federal contractor verifier on a direct contract or
21 individual task order or delivery order on an
22 indefinite-delivery/indefinite-quantity or other
23 blanket contract vehicle.

1 Should a prime contractor provide notice to the Department of
2 its intent not to apply for incentive for a qualified federal
3 contract or fails to qualify under the criteria above,
4 subcontractors in order of tier ranking as determined by the federal
5 contract verifier may assume the role of the prime and apply to
6 become a qualified federal contractor provided the entity meets the
7 same criteria above with the exception that notice of intent to
8 apply with the Department must be provided within sixty (60) days of
9 the prime's disqualification or one hundred eighty (180) days of the
10 award of its subcontract, whichever is later; and

- 11 19. "Proxy establishment" means a public trust which:
- 12 a. is organized and existing under Section 176 of Title
13 60 of the Oklahoma Statutes for the benefit of a
14 geographic area which includes a city or county or
15 some combination thereof, and
 - 16 b. benefits a geographic area where new direct jobs which
17 meet the requirements of the Oklahoma Quality Jobs
18 Program Act are created by an establishment, other
19 than the proxy establishment, which is a branch of the
20 Armed Forces of the United States.

21 A proxy establishment may be determined to be an establishment
22 for all purposes of the Oklahoma Quality Jobs Program Act by the
23 Department and incentive payments may be made to such proxy
24 establishment for new direct jobs otherwise qualified pursuant to

1 the Oklahoma Quality Jobs Program Act. The Department may
2 promulgate rules to further specify the circumstances under which a
3 proxy establishment may be considered an establishment for the
4 purposes of making application for incentive payments pursuant to
5 the Oklahoma Quality Jobs Program Act. Provided, however, that with
6 respect to any data on qualifying direct new jobs from a branch of
7 the Armed Forces of the United States, such rules shall only require
8 a proxy establishment to provide such data as would otherwise be
9 publicly releasable by the branch of the Armed Forces of the United
10 States.

11 B. The Incentive Approval Committee is hereby created and shall
12 consist of the Director of the Office of Management and Enterprise
13 Services, the Director of the Department and one member of the
14 Oklahoma Tax Commission appointed by the Tax Commission, or a
15 designee from each agency approved by such member. It shall be the
16 duty of the Committee to determine the eligibility of all applicants
17 for the Oklahoma Quality Jobs Program Act, subject to the applicable
18 requirements.

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

SECTION 4. This act shall become effective November 1, 2023.

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