An Act

ENROLLED SENATE
BILL NO. 1966

By: Justice of the Senate

and

McNiel, Fields and Inman of the House

An Act relating to revenue and taxation; amending 68 O.S. 2001, Sections 3904, as last amended by Section 3, Chapter 357, O.S.L. 2007 and 3905, as last amended by Section 36, Chapter 281, O.S.L. 2006 (68 O.S. Supp. 2009, Sections 3904 and 3905), which relate to the Small Employer Quality Jobs Act; modifying provision related to time period for purposes of new direct job requirements; modifying provision related to time period for purpose of certain sales computation; modifying provisions related to wage computations; modifying provision related to time period for purposes of ineligibility for receipt of incentive payments; and providing an effective date.

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

SECTION 1. AMENDATORY 68 O.S. 2001, Section 3904, as last amended by Section 3, Chapter 357, O.S.L. 2007 (68 O.S. Supp. 2009, Section 3904), is amended to read as follows:

Section 3904. A. An establishment which meets the qualifications specified in the Small Employer Quality Jobs Incentive Act may receive quarterly incentive payments for a seven-year period from the Oklahoma Tax Commission pursuant to the provisions of the Small Employer Quality Jobs Incentive Act in an

amount equal to the net benefit rate multiplied by the actual gross taxable payroll of new direct jobs as verified by the Tax Commission.

B. In order to receive incentive payments, an establishment shall apply to the Oklahoma Department of Commerce. The application shall be on a form prescribed by the Department and shall contain such information as may be required by the Department to determine if the applicant is qualified. The establishment may apply for an effective date for a project, which shall not be more than twelve (12) months from the date the application is submitted to the Department.

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

1. Be engaged in a basic industry;

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

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

a. if the establishment is located in a municipality with a population less than three thousand five hundred (3,500) persons, as determined by the Oklahoma State Data Center based on the most recent U.S. Department of Commerce data, or if the establishment is located in an unincorporated area and the largest municipality within twenty (20) miles of the establishment is such a municipality, five new direct jobs,

b. if the establishment is located in a municipality with a population of three thousand five hundred (3,500) persons or more but less than seven thousand (7,000) persons, as determined by the Oklahoma State Data

Center based on the most recent U.S. Department of Commerce data, or if the establishment is located in an unincorporated area and the largest municipality within twenty (20) miles of the establishment is such a municipality, ten new direct jobs, and

c. if the establishment is located in a municipality with a population of seven thousand (7,000) persons or more, as determined by the Oklahoma State Data Center based on the most recent U.S. Department of Commerce data, or if the establishment is located in an unincorporated area and the largest municipality within twenty (20) miles of the establishment is such a municipality, fifteen new direct jobs.

Provided, for an establishment engaged in software publishing as defined or classified in the NAICS Manual under Industry Group No. 5112, data processing, hosting and related services as defined or classified in the NAICS Manual under Industry Group No. 5182, computer systems design and related services as defined or classified in the NAICS Manual under Industry Group No. 5415, scientific research and development services as defined or classified in the NAICS Manual under Industry Group No. 5417, medical and diagnostic laboratories as defined or classified in the NAICS Manual under Industry Group No. 6215 or testing laboratories as defined or classified in the NAICS Manual under U.S. Industry No. 541380, the projected minimum employment requirements of this paragraph must be achieved within thirty-six (36) months of the date of application;

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

a. those establishments in the NAICS Manual under the U.S. Industry No. 541710 or 541380 are excused from

the seventy-five percent (75%) out-of-state sales requirement,

b. warehouses that serve as distribution centers for retail or wholesale businesses shall be required to distribute forty percent (40%) of inventory to out-of-state locations, and

c. adjustment and collection services activities defined or classified in the NAICS Manual under U.S. Industry No. 561440 shall be required to have seventy-five percent (75%) of loans to be serviced made by out-of-state debtors;

5. Will pay the individuals it employs in new direct jobs an average annualized wage which equals or exceeds:

a. one hundred twenty-five percent (125%) of the average county wage of small employers located in that county as that percentage is determined by the Oklahoma State Data Center based on the most recent ~~U.S. Department of Commerce~~ wage and employment data from the Oklahoma Employment Security Commission for the county in which the new direct jobs are located. For purposes of this subparagraph, health care premiums paid by the applicant for individuals in new direct jobs shall be included in the annualized wage, or

b. one hundred ten percent (110%) of the average county wage of small employers located in that county as that percentage is determined by the Oklahoma State Data Center based upon the most recent ~~U.S. Department of Commerce~~ wage and employment data from the Oklahoma Employment Security Commission for the county in which the new direct jobs are located. For purposes of this subparagraph, health care premiums paid by the applicant for individuals in new direct jobs shall not be included in the annualized wage; or

c. one hundred percent (100%) of the average county wage, excluding health care premiums paid by the applicant

for individuals in new direct jobs if the county in which the new jobs are located has:

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

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

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

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

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

D. The Oklahoma Department of Commerce shall determine if an applicant is qualified to receive the incentive payment. Upon qualifying the applicant, the Department shall notify the Tax Commission and shall provide it with a copy of the application, and approval which shall provide the number of persons employed by the applicant upon the date of approval and the maximum total incentives which may be paid to the applicant during the seven-year period. The Tax Commission may require the qualified establishment to submit additional information as may be necessary to administer the provisions of the Small Employer Quality Jobs Incentive Act. The approved establishment shall report to the Tax Commission quarterly to show its continued eligibility for incentive payments, as provided in Section 3905 of this title. Establishments may be audited by the Tax Commission to verify such eligibility. Once the

establishment is approved, an agreement shall be deemed to exist between the establishment and the State of Oklahoma, requiring incentive payments to be made for a seven-year period as long as the establishment retains its eligibility and within the limitations of the Small Employer Quality Jobs Incentive Act which existed at the time of such approval. Any establishment which has been approved for incentive payments prior to July 1, 2002, shall continue to receive such payments pursuant to the laws as they existed prior to July 1, 2002, for any period of time of the original five-year period for such payments remaining after July 1, 2002.

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

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

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

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

a. created and or maintained the minimum number of new direct jobs as specified in paragraph 3 of subsection C of Section 3904 of this title, and

b. paid the individuals it employed in new direct jobs an annualized wage which equaled or exceeded the applicable percentage of the average county wage as that percentage was determined by the Oklahoma Department of Commerce upon approval of the application.

3. Upon determining that an establishment has met the requirements of paragraph 2 of this subsection for the initial calendar quarter of the incentive period, the Tax Commission shall issue a warrant to the establishment in an amount which shall be equal to the net benefit rate multiplied by the amount of gross taxable payroll of new direct jobs actually paid by the establishment.

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

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

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

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

Passed the Senate the 5th day of May, 2010.

Presiding Officer of the Senate

Passed the House of Representatives the 19th day of April, 2010.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Governor this 6th
day of May, **20** 10,
at 1:26 **o'clock** P **M.**

By:

Approved by the Governor of the State of Oklahoma the 10th **day of**
May, **20** 10, **at** 6:58 **o'clock** P **M.**

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this
11th **day of** May, **20** 10,
at 11:52 **o'clock** A **M.**

By: