

CHAPTER 85. VARIOUS TAX INCENTIVES

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[**Authority:** 68 O.S. §§ 203, 3604, 3608; 3624(B), 3710, 3907, and 4108]

CHAPTER 85. VARIOUS TAX INCENTIVES

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CHAPTER 85. VARIOUS TAX INCENTIVES

SUBCHAPTER 1. OKLAHOMA QUALITY JOBS PROGRAM

710:85-1-1. Purpose

The provisions of this Subchapter have been promulgated for the purpose of compliance with the Oklahoma Administrative Procedures Act, 75 O.S. §§250.1 et seq. and to facilitate the administration, allocation and payment of certain tax incentives pursuant to the Oklahoma Quality Jobs Program Act.

[Source: Added at 11 Ok Reg 703, eff. 11-29-93 (emergency); Added at 11 Ok Reg 3525, eff 6-26-94]

710:85-1-2. Definitions

In addition to terms defined in 68 O.S. § 3603, the following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Baseline employment" means an establishment's total number of jobs which existed in this state prior to approval of the establishment's application by the Oklahoma Department of Commerce. A job shall be deemed to exist in this state prior to approval of an establishment's application if the activities and functions for which the particular job exists have been ongoing at any time within six months prior to approval of the establishment. Upon approval of an application or upon the start date of a project, if it is more than sixty days later than the approval date, the Department shall determine an establishment's baseline employment to be its current employment or its average employment over the last four quarters, whichever is greater.

"Commission" means the Oklahoma Tax Commission

"Department" means the Oklahoma Department of Commerce.

"Gross payroll" means wages subject to Oklahoma Income tax, as defined in 68 O.S. §2385.1, for new direct jobs.

"New direct jobs" means **"new direct jobs"** of a qualified establishment as recognized by the Oklahoma Department of Commerce.

"Qualified establishment" means an establishment for which the Commission has been notified of an approved application for incentive payments by the Oklahoma Department of Commerce.

"Start date" means *the date on which an establishment may begin accruing benefits for the creation of new direct jobs, which date shall be determined by the Department.* [See: 68 O.S.2001, § 3603]

[Source: Added at 11 Ok Reg 703, eff 11-29-93 (emergency); Added at 11 Ok Reg 3525, eff 6-26-94; Amended at 12 Ok Reg 2659, eff 6-26-95; Amended at 20 Ok Reg 2594, eff 7-11-03; Amended at 24 Ok Reg 1452, eff May 25, 2007]

710:85-1-3. Procedure upon qualification; reporting [REVOKED]

[Source: Added at 11 Ok Reg 703, eff. 11-29-93 (emergency); Added at 11 Ok Reg 3525, eff 6-26-94; Amended at 20 Ok Reg 2594, eff 7-11-03; Amended at 22 Ok Reg 2249, eff 6-25-05; Revoked at 24 Ok Reg 1452, eff May 25, 2007]

710:85-1-4. Audits; auditors

(a) **Reports subject to audit.** The returns filed pursuant to the requirements of the Quality Jobs

Program Act and the Rules promulgated thereunder shall be accepted, as filed, by the Commission, subject to audit.

(b) **Examination by agent of the Commission.** Any representative of the Commission holding a certificate of authority may make an examination or investigation of the place of business, tangible personal property, equipment and facilities, and the books, records, papers, vouchers, accounts and documents of any qualified establishment. [See: 68 O.S. §206]

(c) **Duty to comply and cooperate with examination.** It shall be the duty of every qualified establishment and every director, officer, or employee of every qualified establishment to exhibit to the Commission, or to the employees or agents of such Commission, the items mentioned in (b) of this Section.

[Source: Added at 11 Ok Reg 703, eff. 11-29-93 (emergency); Added at 11 Ok Reg 3525, eff 6-26-94]

710:85-1-5. Commission to give notice of first incentive payment

Notification of the first incentive payment made to a qualified establishment shall be sent by the Commission to the Oklahoma Department of Commerce.

[Source: Added at 11 Ok Reg 703, eff. 11-29-93 (emergency); Added at 11 Ok Reg 3525, eff 6-26-94]

710:85-1-6. Qualified establishments are employers

Qualified establishments are employers for purposes of Oklahoma Income Tax Withholding taxes. [See: 68 O.S. §2385.1 et seq. and 710:90-1-1 through 710:90-7-2]

[Source: Added at 11 Ok Reg 703, eff. 11-29-93 (emergency); Added at 11 Ok Reg 3525, eff 6-26-94]

710:85-1-7. Transfers to Quality Jobs Program Incentive Payment Fund

Each month the Commission shall transfer from income tax withholding collected, to the Quality Jobs Program Incentive Payment Fund ("Fund"), the sum total of the net benefit rate multiplied by the gross payroll for each qualified establishment.

[Source: Added at 11 Ok Reg 703, eff. 11-29-93 (emergency); Added at 11 Ok Reg 3525, eff 6-26-94]

710:85-1-8. Procedure for filing claim, verification, payment, protest

(a) **Contents of claim.** As soon as practicable after the end of a calendar quarter, the qualified establishment shall file a claim for gross payroll paid the previous quarter. The claim, on forms prescribed by the Commission, shall include:

- (1) Name of qualified establishment;
- (2) Identification number of qualified establishment;
- (3) Period for which claim is filed;
- (4) Actual number of new direct jobs during period of claim;
- (5) Gross payroll of new direct jobs during period of claim;
- (6) Net benefit rate; and
- (7) Amount claimed for period.

(b) **Deadline for filing first claim.** For establishments that were approved after October 31, 2001, *in no event shall the first claim for incentive payments be filed later than three (3) years from the start date designated by the Oklahoma Department of Commerce.*

(c) **Amount of claim not to include penalty, interest paid.** The amount claimed shall not include any portion of penalty and/or interest paid by the qualified establishment because of delinquent filing and/or payment of withholding tax. [See: 68 O.S. §2385.6]

(d) **Verification of claim.** The Commission shall verify the actual gross payroll utilizing information available to the Commission. All participating companies are required to retain documentation to verify the quality jobs employees and rebate amounts claimed. Documents retained shall include all employee names, both base and new employees, social security numbers, original hire dates, individual wages drawn for each month, and copies of claim forms for the duration of the contract. These records shall be retained in both hard copy form and in an electronic format approved by the Commission for a minimum of three (3) years after the final rebate payment is received by the company. In the event the Commission is unable to verify the gross payroll, the Commission may request additional information from the qualified establishment or may request the qualified establishment revise its claim to the amount verified by the Commission.

(e) **Payment of claim.** Except as provided in 710:85-1-11, the qualified establishment whose claim has been approved shall receive a warrant in an amount not to exceed the net benefit rate multiplied by the actual gross payroll for new direct jobs for the calendar quarter for which the claim is filed.

(f) **Procedure when claim cannot be verified or is revised.** The following shall apply when a claim cannot be verified or is revised by the Commission.

(1) The qualified establishment may, within sixty (60) days after the mailing of notification of action by the Commission, file with the Commission a protest under oath, signed by the qualified establishment or a duly authorized agent setting out:

- (A) a statement of the action by the Commission that is protested;
- (B) a statement of the qualified establishment's disagreement with such action; and
- (C) supporting documentation relied on by the qualified establishment in support of its claim.

(2) If the qualified establishment fails to file a written protest within the sixty (60) days, then the action of the Commission shall become final and no appeal will be entertained.

(3) A protest to the action of the Commission filed by a qualified establishment shall be governed by 710:1-5-21 through 710:1-5-48.

[Source: Added at 11 Ok Reg 703, eff 11-29-93 (emergency); Added at 11 Ok Reg 3525, eff 6-26-94; Amended at 12 Ok Reg 2659, eff 6-26-95; Amended at 20 Ok Reg 2594, eff 7-11-03; Amended at 22 Ok Reg 2250, eff 6-25-05; Amended at 24 Ok Reg 1452, eff May 25, 2007]

710:85-1-9. Disclosure of information

The Commission may, upon request, disclose the name of the qualified establishment that has received incentive payment(s) and the amount of payment(s) received.

[Source: Added at 11 Ok Reg 703, eff. 11-29-93 (emergency); Added at 11 Ok Reg 3525, eff 6-26-94]

710:85-1-10. Limitation on incentive payments

(a) **Ten year limitation from initial claim.** No claim for an incentive payment shall be honored if made for a period later than ten (10) years after the quarter for which the qualified establishment's first claim was made.

(b) **Ceiling for total payments limited to "estimated net direct state benefits."** No claim for an

incentive payment shall be honored if payment and other incentive payments made to the qualified establishment exceeds the "estimated net direct state benefits" established by the Oklahoma Department of Commerce except for establishments subject to 68 O.S. §3603(A)(6)(d).

[Source: Added at 11 Ok Reg 703, eff. 11-29-93 (emergency); Added at 11 Ok Reg 3525, eff 6-26-94; Amended at 22 Ok Reg 2250, eff 6-25-05]

710:85-1-11. Incentive payments unavailable to delinquent tax reporters/remitters

No incentive payment will be made to any qualified establishment who is delinquent in the filing of any state tax return or report or who has an established liability for any state tax until the delinquent report(s) or return(s) is filed and established liability paid.

[Source: Added at 11 Ok Reg 703, eff. 11-29-93 (emergency); Added at 11 Ok Reg 3525, eff 6-26-94]

710:85-1-12. Cessation, suspension, resumption of incentive payments

(a) **Cessation of incentive payments.** The Commission shall cease incentive payments if the gross payroll of the qualified establishment for one of any four (4) consecutive calendar quarters does not equal or exceed the applicable total required by Section 3604 of Title 68 within three (3) years of the start date. A qualified establishment whose incentive payments have ceased under this subsection may not receive any further incentive payments unless and until actual gross payroll equals or exceeds the amount specified in Section 3604 of Title 68.

(b) **Suspension, resumption of incentive payments for certain establishments that were approved prior to June 4, 2003.** Additionally, the Commission shall suspend the incentive payments if the average annualized wage of an establishment fails to meet the criteria required by the provisions of law under which it initially applied and was approved within three (3) years of the first incentive payment.

[Source: Added at 11 Ok Reg 703, eff. 11-29-93 (emergency); Added at 11 Ok Reg 3525, eff 6-26-94; Amended at 22 Ok Reg 2250, eff 6-25-05]

710:85-1-13. Qualified establishment may protest suspension of incentive payments

The following procedures shall apply if the Commission ceases or suspends a qualified establishment's incentive payment(s):

- (1) **Filing of protest.** The qualified establishment may, within sixty (60) days after the mailing of notification of action by the Commission, file with the Commission a protest under oath, signed by the qualified establishment or his duly authorized agent setting out:
 - (A) a statement of action as determined by the Commission;
 - (B) a statement of the qualified establishment's disagreement with such action; and
 - (C) supporting documentation relied on by the qualified establishment in support of its claim.
- (2) **Result of failure to file protest.** If the qualified establishment fails to file a written protest within the sixty (60) days, then the action of the Commission shall become final and no appeal will be entertained.
- (3) **Rules of procedure to govern.** A protest to the action of the Commission filed by a qualified establishment shall be governed by 710:1-5-21 through 710:1-5-48.

[Source: Added at 11 Ok Reg 703, eff. 11-29-93 (emergency); Added at 11 Ok Reg 3525, eff 6-26-94; Amended at 22 Ok Reg 2251, eff 6-25-05]

SUBCHAPTER 3. SAVING QUALITY JOBS PROGRAM

[Codified 6-26-95]

[Authority: 68 O.S.Supp.1995, §§203, 3608, 3710]

PART 1. GENERAL PROVISIONS

710:85-3-1. Purpose

The provisions of this Subchapter have been promulgated for the purpose of compliance with the Oklahoma Administrative Procedures Act, 75 O.S. §§250.1 et seq. and to facilitate the administration, allocation and payment of certain tax incentives pursuant to 68 O.S.Supp.1994, §§3701 through 3712, the Saving Quality Jobs Act.

[Source: Added at 12 Ok Reg 2659, eff 6-26-95]

710:85-3-2. Definitions

In addition to terms defined in Sections 3603 and 3703 of Title 68 of the Oklahoma Statutes and in 710:85-1-2 of the *Oklahoma Administrative Code*, the following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"**At-risk jobs**" means, in addition to the definition found in the Saving Quality Jobs Act, 68 O.S. §3703, those jobs recognized as "at-risk jobs", by the Oklahoma Department of Commerce. "**High impact project**" means one wherein an establishment, qualified under the Oklahoma Quality Jobs Program Act, 68 O.S. §§3602-3609, and approved by the Oklahoma Department of Commerce, provides a number of new direct jobs equal to, or greater than, one percent (1%) of the total labor force of the county in which the establishment is located.

[Source: Added at 12 Ok Reg 2659, eff 6-26-95]

PART 3. PREMIUM PAYMENT PROGRAM

710:85-3-30. Procedure upon qualification; reporting

(a) **Procedures upon initial qualification.** Upon receipt of each approved application for incentive payments from the Department and notification of the start date from the qualified establishment, the Commission will establish a withholding tax account. Such account shall be utilized by the qualified establishment to report the actual number and gross payroll of new direct jobs for the qualified establishment.

(b) **Reports required.** The reports, on forms prescribed by the Commission, shall be filed in the same manner as returns for withholding, reporting and remitting Oklahoma Income Taxes. A return shall be filed for each period following notification by the Commission, even if the qualified establishment has no new direct jobs and gross payroll for the period. [See: 68 O.S. §2385.1 et seq., OAC 710:90-1-1 through 710:90-7-2]

[Source: Added at 12 Ok Reg 2659, eff 6-26-95; Amended at 22 Ok Reg 2251, eff 6-25-05]

710:85-3-31. Audits; auditors

(a) **Reports subject to audit.** The returns filed pursuant to the requirements of the Saving Quality Jobs Act and the Rules promulgated thereunder shall be accepted, as filed, by the Commission,

subject to audit.

(b) **Examination by agent of the Commission.** Any representative of the Commission holding a certificate of authority may make an examination or investigation of the place of business, tangible personal property, equipment and facilities, and the books, records, papers, vouchers, accounts and documents of any qualified establishment. [See: 68 O.S. §206]

(c) **Duty to comply and cooperate with examination.** It shall be the duty of every qualified establishment and every director, officer, or employee of every qualified establishment to exhibit to the Commission, or to the employees or agents of such Commission, the items mentioned in (b) of this Section.

[Source: Added at 12 Ok Reg 2659, eff 6-26-95]

710:85-3-32. Qualified establishments are employers

Qualified establishments are employers for purposes of Oklahoma Income Tax Withholding taxes. [See: 68 O.S. §2385.1 et seq. and 710:90-1-1 through 710:90-7-2]

[Source: Added at 12 Ok Reg 2659, eff 6-26-95; Amended at 22 Ok Reg 2251, eff 6-25-05]

710:85-3-33. Transfers to Saving Quality Jobs Premium Payment Fund

Each month the Commission shall transfer from income tax withholding collected, to the Saving Quality Jobs Premium Payment Fund ("Fund"), the sum total of the premium net benefit rate multiplied by the gross payroll for each qualified establishment.

[Source: Added at 12 Ok Reg 2659, eff 6-26-95]

710:85-3-34. Procedure for filing claim, verification, payment, protest

(a) **Contents of claim.** As soon as practicable after the end of a calendar quarter, the qualified establishment shall file a claim for gross payroll paid the previous quarter. The claim, on forms prescribed by the Commission, shall include:

- (1) Name of qualified establishment;
- (2) Identification number of qualified establishment;
- (3) Period for which claim is filed;
- (4) Actual number of new direct jobs or at risk jobs during period of claim;
- (5) Gross payroll of new direct jobs or at risk jobs during period of claim;
- (6) Premium benefit rate; and
- (7) Amount claimed for period.

(b) **Amount of claim not to include penalty, interest paid.** The amount claimed shall not include any portion of penalty and/or interest paid by the qualified establishment because of delinquent filing and/or payment of withholding tax. [See: 68 O.S. §2385.6]

(c) **Verification of claim.** The Commission shall verify the actual gross payroll utilizing information available to the Commission. In the event the Commission is unable to verify, the Commission may request additional information from the qualified establishment or may request the qualified establishment revise its claim to the amount verified by the Commission.

(d) **Payment of claim.** The qualified establishment whose claim has been approved will receive the amount claimed for the "Saving Quality Job" premium payment and the "Quality Job" incentive payment in one warrant. The combined premium payment and quality job payment cannot exceed

five percent (5%) of the gross payroll of the establishment.

(e) **Procedure when claim cannot be verified or is revised.** The following shall apply when a claim cannot be verified or is revised by the Commission.

(1) The qualified establishment may, within sixty (60) days after the mailing of notification of action by the Commission, file with the Commission a protest under oath, signed by the qualified establishment or its duly authorized agent setting out:

(A) a statement of action as determined by the Commission;

(B) a statement of the qualified establishment's disagreement with such action; and

(C) supporting documentation relied on by the qualified establishment in support of its claim.

(2) If the qualified establishment fails to file a written protest within the sixty (60) days, then the action of the Commission shall become final and no appeal will be entertained.

(3) A protest to the action of the Commission filed by a qualified establishment shall be governed by the Rules of Practice and Procedure before the Commission set out in 710:1-5-21 through 710:1-5-48.

[Source: Added at 12 Ok Reg 2659, eff 6-26-95; Amended at 22 Ok Reg 2251, eff 6-25-05]

710:85-3-35. Disclosure of information

The Commission may, upon request, disclose the name of the qualified establishment that has received premium payment(s) and the amount of payment(s) received.

[Source: Added at 12 Ok Reg 2659, eff 6-26-95]

710:85-3-36. Limitations

(a) **Limitations on the number of "at-risk jobs".** The number of "at-risk" jobs, for purposes of this Subchapter, shall not exceed the number of new direct jobs. Nor shall "at-risk" jobs, for purposes of this Subchapter, exceed Two Hundred (200) jobs for any single establishment.

(b) **Three year limitation from initial claim.** No claim for a premium payment shall be honored if made for a period later than three (3) years after the quarter for which the qualified establishment's first claim was made.

(c) **Ceiling for total payments limited to "estimated net direct state benefits".** No claim for a premium payment shall be honored if the payment exceeds twenty percent (20%) of the "estimated net direct state benefits" established by the Oklahoma Department of Commerce.

[Source: Added at 12 Ok Reg 2659, eff 6-26-95]

710:85-3-37. Premium payments not available to delinquent tax reporters/remitters

No premium payment will be made to any qualified establishment which is delinquent in the filing of any state tax return or report or which has an established liability for any state tax, until the delinquent report(s) or return(s) is filed and established liability paid.

[Source: Added at 12 Ok Reg 2659, eff 6-26-95;]

710:85-3-38. Cessation or suspension of premium payments and incentive payments

(a) **Cessation of incentive payments.** The Commission will cease incentive payments when the total payments for the Saving Quality Jobs Premium Fund and the High Impact Projects Premium Fund reaches Two Million Five Hundred Thousand Dollars (\$2,500,000.00) per fiscal year.

(b) **Suspension.** The Commission shall suspend the incentive payments if the criteria outlined in this

Subchapter are not met.

[Source: Added at 12 Ok Reg 2659, eff 6-26-95]

PART 5. HIGH IMPACT PROJECTS

710:85-3-50. Qualifications for establishment

(a) **Initial qualification.** To qualify for the incentive payments under the terms of this Subchapter, an establishment must meet qualification as specified in the Quality Jobs Act, and have an annual gross payroll of at least One Million Dollars (\$1,000,000.00), but less than Two Million Five Hundred Dollars (\$2,500,000.00).

(b) **New Direct Jobs.** "New direct jobs" must be equal to or greater than one percent (1%) of the total labor force of the county in which the establishment is located.

[Source: Added at 12 Ok Reg 2659, eff 6-26-95]

710:85-3-51. Procedures upon qualification

(a) **Procedures upon initial qualification.** Upon receipt of each approved incentive offer from the Oklahoma Department of Commerce and notification of start date from the qualified establishment, the Commission will establish a withholding tax account. Such account shall be utilized by the qualified establishment to report the actual number and gross payroll of new direct jobs for the qualified establishment.

(b) **Reports required.** The reports, on forms prescribed by the Commission, shall be filed quarterly.

[Source: Added at 12 Ok Reg 2659, eff 6-26-95]

710:85-3-52. Transfers to High Impact Projects Payment Fund

Each month the Commission shall transfer from income tax withholding collected, to the High Impact Projects Fund ("Fund"), the sum total of two and one-half percent (2 %), multiplied by the gross payroll of each qualified establishment for new direct jobs.

[Source: Added at 12 Ok Reg 2659, eff 6-26-95]

710:85-3-53. Disclosure of information

The Commission may, upon request, disclose the name of the qualified establishments that have received high impact project incentive payment(s) and the amount of payment(s) received.

[Source: Added at 12 Ok Reg 2659, eff 6-26-95]

710:85-3-54. Limitations

(a) **Limitations on the number of "at-risk jobs".** The number of "at-risk" jobs, for purposes of this Subchapter, shall not exceed the number of new direct jobs. Nor shall "at-risk" jobs, for purposes of this Subchapter, exceed Two Hundred (200) jobs for any single establishment.

(b) **Six year limitation from initial claim.** No claim for an incentive payment shall be honored if made for a period later than six (6) years after the quarter for which the qualified establishment's first claim was made.

(c) **Claim period limited if minimum payroll amount not met.** The claim period set out in (b) of

this Section shall be further limited to three (3) years from the date of the initial qualifying quarter if the minimum annual payroll of One Million Dollars (\$1,000,000.00) is not met during the period. Otherwise, the claims period shall be six (6) years, and there is no ceiling as to the amount received by the qualified establishment.

[Source: Added at 12 Ok Reg 2659, eff 6-26-95]

710:85-3-55. Incentive payments not available to delinquent tax reporters/remitters

No incentive payment will be made to any qualified establishment which is delinquent in the filing of any state tax return or report or which has an established liability for any state tax until the delinquent report(s) or return(s) is filed and established liability paid.

[Source: Added at 12 Ok Reg 2659, eff 6-26-95]

710:85-3-56. Cessation or suspension of premium payments and incentive payments

(a) **Cessation of incentive payments.** The Commission will cease incentive payments when the total payments for the Saving Quality Jobs Premium Fund and the High Impact Projects Premium Fund reaches Two Million Five Hundred Thousand Dollars (\$2,500,000.00) per fiscal year.

(b) **Suspension.** The Commission shall suspend the incentive payments if the criteria outlined in this Subchapter are not met.

[Source: Added at 12 Ok Reg 2659, eff 6-26-95]

710:85-3-57. Qualified establishment may protest suspension of payments

The following procedures shall apply if the Commission ceases or suspends a qualified establishment's payment(s):

(1) **Filing of protest.** The qualified establishment may, within sixty (60) days after the mailing of notification of action by the Commission, file with the Commission a protest under oath, signed by the qualified establishment or its duly authorized agent setting out:

(A) a statement of action as determined by the Commission;

(B) a statement of the qualified establishment's disagreement with such action; and

(C) supporting documentation relied on by the qualified establishment in support of its claim.

(2) **Result of failure to file protest.** If the qualified establishment fails to file a written protest within the sixty (60) days, then the action of the Commission shall become final and no appeal will be entertained.

(3) **Rules of procedure to govern.** A protest to the action of the Commission filed by a qualified establishment shall be governed by the Rules of Practice and Procedure before the Commission set out in 710:1-5-21 through 710:1-5-48.

[Source: Added at 12 Ok Reg 2659, eff 6-26-95; Amended at 22 Ok Reg 2252, eff 6-25-05]

SUBCHAPTER 5. SMALL EMPLOYER QUALITY JOBS PROGRAM

710:85-5-1. Purpose

The provisions of this Subchapter have been promulgated for the purpose of compliance with the Oklahoma Administrative Procedures Act, 75 O.S. §§250.1 et seq. and to facilitate the

administration, allocation and payment of certain tax incentives pursuant to the Small Employer Quality Jobs Incentive Act. [68 O.S.Supp.1997, §§3901 et seq.]

[Source: Added at 15 Ok Reg 2421, eff 6-11-98]

710:85-5-2. Definitions

In addition to terms defined in 68 O.S. §3903, the following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Commission" means the Oklahoma Tax Commission.

"Department" means the Oklahoma Department of Commerce.

"New direct jobs" means **"new direct jobs"** of a qualified establishment as recognized by the Oklahoma Department of Commerce.

"Qualified establishment" means an establishment for which the Commission has been notified of an approved application for incentive payments by the Oklahoma Department of Commerce.

[Source: Added at 15 Ok Reg 2421, eff 6-11-98]

710:85-5-3. Procedure upon qualification; reporting [REVOKED]

[Source: Added at 15 Ok Reg 2421, eff 6-11-98; Amended at 22 Ok Reg 2252, eff 6-25-05; Revoked at 24 Ok Reg 1452, eff May 25, 2007]

710:85-5-4. Audits; auditors

(a) **Reports subject to audit.** The reports filed pursuant to the requirements of the Small Employer Quality Jobs Incentive Act and the rules promulgated thereunder shall be accepted, as filed, by the Commission, subject to audit.

(b) **Examination by agent of the Commission.** Any representative of the Commission holding a certificate of authority may make an examination or investigation of the place of business, tangible personal property, equipment and facilities, and the books, records, papers, vouchers, accounts and documents of any qualified establishment. [See: 68 O.S. §206]

(c) **Duty to comply and cooperate with examination.** It shall be the duty of every qualified establishment and every director, officer, or employee of every qualified establishment to exhibit to the Commission, or to the employees or agents of such Commission, the items mentioned in (b) of this Section.

[Source: Added at 15 Ok Reg 2421, eff 6-11-98]

710:85-5-5. Commission to give notice of first incentive payment

Notification of the first incentive payment made to a qualified establishment shall be sent by the Commission to the Oklahoma Department of Commerce.

[Source: Added at 15 Ok Reg 2421, eff 6-11-98]

710:85-5-6. Qualified establishments are employers

Qualified establishments are employers for purposes of Oklahoma Income Tax Withholding taxes. [See: 68 O.S. § 2385.1 et seq. and OAC 710:90-1-1 through 710:90-7-2]

[Source: Added at 15 Ok Reg 2421, eff 6-11-98; Amended at 22 Ok Reg 2252, eff 6-25-05]

710:85-5-7. Transfers to Small Employer Quality Jobs Incentive Payment Fund

Each month the Commission shall transfer from income tax withholding collected, to the Small Employer Quality Jobs Incentive Payment Fund ("Fund"), the sum total of the net benefit rate multiplied by the amount of gross payroll of new direct jobs actually paid by qualified establishments.

[Source: Added at 15 Ok Reg 2421, eff 6-11-98; Amended at 22 Ok Reg 2252, eff 6-25-05]

710:85-5-8. Procedure for filing report, review, determination

(a) **Contents of report.** As soon as practicable after the end of a calendar quarter, the qualified establishment shall file a report for gross payroll paid the previous quarter. The report on forms prescribed by the Commission, shall include:

- (1) Name of qualified establishment;
 - (2) Identification number of qualified establishment;
 - (3) Period for which report is filed;
 - (4) Actual number of new direct jobs during period of report;
 - (5) Individual gross payroll for each new direct job for the establishment for the report period;
- and
- (6) Other information required to be submitted by the Commission.

(b) **Reports to constitute a claim.** The reports filed pursuant to this Section shall constitute an annual a claim for incentive payments. The establishment must continue to file quarterly reports until reports covering the seven year incentive period have been filed, or until it is no longer qualified to receive incentive payments.

(c) **Commission action upon receipt of reports.** Upon receipt of the reports for the initial calendar quarter and for each subsequent calendar quarter, the Commission shall make the following determinations:

- (1) That the establishment has created or maintained the minimum number of new direct jobs as specified in 68 O.S. § 3904(C)(3);
- (2) That the individuals employed in the new direct jobs were paid an annualized wage which equaled or exceeded the applicable percentage of the average county wage as determined by the Department upon the approval of the application; and
- (3) That a determination by the Department has been made that the establishment continues to meet the requirements set out in the initial approval.

[Source: Added at 15 Ok Reg 2421, eff 6-11-98; Amended at 22 Ok Reg 2252, eff 6-25-05]

710:85-5-9. Verification of claim

The Commission shall verify the actual gross payroll utilizing available information. In the event the Commission is unable to verify, the Commission may request additional information from the qualified establishment or may request the qualified establishment revise its claim to the amount verified by the Commission.

[Source: Added at 15 Ok Reg 2421, eff 6-11-98; Amended at 16 Ok Reg 2673, eff 6-25-99]

710:85-5-10. Payment of claim

(a) After the review of the reports and the verification that the establishment qualifies, as set out in *OAC 710:85-5-9*, the Commission shall issue a warrant in the amount equal to the net benefit multiplied by the amount of gross payroll of new direct jobs actually paid by the establishment.

(b) The amount claimed shall not include in the computation of gross payroll any portion of penalty or interest paid as a result of delinquency in filing or paying income tax withheld.

[Source: Added at 15 Ok Reg 2421, eff 6-11-98; Amended at 22 Ok Reg 2252, eff 6-25-05; Amended at 24 Ok Reg 1452, eff May 25, 2007]

710:85-5-11. Procedure when claim cannot be verified, is revised, or is denied

The procedures set out in this Section shall apply when a claim cannot be verified, or is revised, by the Commission:

(1) The qualified establishment may, within sixty (60) days after the mailing of notification of action by the Commission, file with the Commission a protest under oath, signed by the qualified establishment or a duly authorized agent, setting out:

(A) A statement of the action determined by the Commission;

(B) A statement of the qualified establishment's disagreement with such action; and

(C) Supporting documentation relied on by the qualified establishment in support of its claim.

(2) If the qualified establishment fails to file a written protest within the sixty (60) days, then the action of the Commission shall become final and no appeal will be entertained.

(3) A protest to the action of the Commission filed by a qualified establishment shall be governed by *OAC 710:1-5-21* through *710:1-5-48*.

[Source: Added at 15 Ok Reg 2421, eff 6-11-98; Amended at 22 Ok Reg 2253, eff 6-25-05]

710:85-5-12. Disclosure of information

The Commission may, upon request, disclose the name of the qualified establishment that has received any incentive payments and the amount of payments received.

[Source: Added at 15 Ok Reg 2421, eff 6-11-98]

710:85-5-13. Limitation on incentive payments

No claim for an incentive payment shall be honored if made for a period later than seven (7) years after the first quarter of the year for which the qualified establishment's first claim was made.

[Source: Added at 15 Ok Reg 2421, eff 6-11-98; Amended at 22 Ok Reg 2253, eff 6-25-05]

710:85-5-14. Incentive payments unavailable to delinquent tax reports/remitters

No incentive payment will be made to any qualified establishment that is delinquent in the filing of any state tax return or report or for which there is an established liability for any state tax until all delinquent reports or returns are filed and the established liability paid.

[Source: Added at 15 Ok Reg 2421, eff 6-11-98]

710:85-5-15. Denial, cessation, and resumption of incentive payments

(a) **Failure to meet requirements for incentive payments within 12 months of the date of**

approval. An establishment that has not met the requirements for receiving incentive payments, as determined by the review described in *OAC 710:85-5-8*, within 12 months of the date the application is approved, is ineligible to receive any incentive payments under the existing application and approval.

(b) **Failure to meet requirements during any of the twenty-seven calendar quarters subsequent to the initial calendar quarter.** An establishment which fails to meet the requirements set out in *OAC 710:85-5-8* in any of the twenty-seven calendar quarters subsequent to the initial-calendar quarter, is ineligible for an incentive payment for that calendar quarter. If the establishment meets the requirements in a later calendar quarter, the incentive payment for the later calendar quarter may be made after the review and determination for that later calendar quarter, as set out in *OAC 710:85-5-8* is completed.

[Source: Added at 15 Ok Reg 2421, eff 6-11-98; Amended at 22 Ok Reg 2253, eff 6-25-05]

SUBCHAPTER 7. OKLAHOMA FILM ENHANCEMENT REBATE PROGRAM

710:85-7-1. Purpose

The provisions of this Subchapter have been promulgated for the purpose of compliance with the Oklahoma Administrative Procedures Act, 75 O.S. § 250.1 et seq. and to facilitate the administration and payment of certain tax incentives pursuant to the *Compete with Canada Film Act*. [See: 68 O.S.2001, § 3621 et seq.]

[Source: Added at 20 Ok Reg 2594, eff 7-11-03]

710:85-7-2. Definitions

In addition to terms defined in 68 O.S. § 3623, the following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"**Commission**" means the Oklahoma Tax Commission.

"**Fund**" means the Oklahoma Film Enhancement Rebate Program Revolving Fund.

"**Office**" means the Office of the Oklahoma Film and Music Commission.

[Source: Added at 20 Ok Reg 2594, eff 7-11-03; Amended at 22 Ok Reg 2253, eff 6-25-05]

710:85-7-3. Procedure upon qualification; payment

(a) **Procedures upon approval by Office.** Upon notification to the Commission of each approved claim by the Office, the Commission will verify:

(1) That the claim of the production company contains an affidavit stating that the company has not received an exemption from sales taxes pursuant to the provisions of 68 O.S. § 1357(21); and,

(2) That an Oklahoma income tax return has been filed by the claimant for the tax year in which the production expenses were made.

(b) **When repayment of taxes may be required.** If the facts set out in (a) of this Section cannot be verified, then the Commission shall require repayment of previously exempted sales taxes, and documentation that the taxes have been repaid shall be included in the claim.

(c) **Payment of claims.** Upon approval of the claim by the Office and processing by the Commission, the Commission shall issue payment for all approved claims from funds in the "Fund": on or after July 1, 2006, and on or after each July 1 thereafter following the fiscal year in which the

documented expenditures were made. The amount of payments in any single fiscal year shall not exceed Five Million Dollars (\$5,000,000.00). If the amount of approved claims exceeds the amount specified in this Section in a fiscal year, then the payments will be made in the order in which claims are approved by the office and any remaining approved claims will be carried over to the next fiscal year, subject to the same limitations for that year as set out in this Section.

[Source: Added at 20 Ok Reg 2594, eff 7-11-03; Amended at 22 Ok Reg 2253, eff 6-25-05; Amended at 23 Ok Reg 2870, eff 6-25-06]

SUBCHAPTER 9. OKLAHOMA QUALITY INVESTMENT ACT

710:85-9-1. Purpose

The provisions of this Subchapter have been promulgated for the purpose of compliance with the Oklahoma Administrative Procedures Act, 75 O.S. §§ 250.1 et seq. and to facilitate the administration, allocation and payment of certain tax incentives pursuant to the Oklahoma Quality Investment Act.

[Source: Added at 22 Ok Reg 2254, eff 5-25-05]

710:85-9-2. Definitions

In addition to terms defined in 68 O.S. § 4103, the following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Capital costs" means costs incurred by a qualified establishment for land, buildings, improvements to buildings, fixtures and for machinery, equipment, and other personal property used in and for the manufacturing process with respect to its manufacturing site in Oklahoma and specified in a quality investment agreement.

"Commission" means the Oklahoma Tax Commission.

"Department" means the Oklahoma Department of Commerce.

"Manufacturing site" means a location where a manufacturing operation is conducted, including a location consisting of one or more buildings or structures in an area owned, leased, or controlled by a manufacturer. [68 O.S.Supp.2004, § 1352(15)]

"Qualified establishment" means an establishment for which the Commission has been notified of an approved application for incentive payments by the Oklahoma Department of Commerce.

"Qualified investment agreement" means an agreement between a qualified establishment and the Department for a period not to exceed 5 years for the purpose of computing the total incentive payment amount.

"Start date" means the date on which an establishment may begin accruing benefits because of investment of new capital costs in a manufacturing site that is designated in a quality investment agreement.

[Source: Added at 22 Ok Reg 2254, eff 5-25-05]

710:85-9-3. Transfers to Quality Investment Payment Fund

Each month the Commission shall transfer from state sales tax and withholding tax collected, to the Quality Investment Payment Fund, ("Fund") the sum total of the amount required to make the investment payments.

[Source: Added at 22 Ok Reg 2254, eff 5-25-05]

710:85-9-4. Procedure for filing claim, review determination

(a) **Contents of claim.** As soon as practicable after the end of a fiscal year, the qualified establishment shall file a claim for the payment with the commission for ten percent (10%) of the total amount of capital costs actually invested by the establishment during that fiscal year. The claim, on forms prescribed by the Commission, shall include:

- (1) Name of qualified establishment;
- (2) Identification number of qualified establishment;
- (3) Period for which claim is filed;
- (4) Total amount of capital costs invested during the period of claim;
- (5) Amount claimed for period.

(b) **Verification of claim.** The Commission shall verify the actual amount of capital costs and the actual tax benefit accrued or accruing to the State of Oklahoma utilizing information available to the Commission. In the event the Commission is unable to verify, the Commission may request additional information from the qualified establishment or may reject the establishment's claim based upon analysis of actual capital costs incurred by the establishment.

(c) **Payment of claim.** Except as provided in 710:85-9-7, the qualified establishment whose claim has been approved shall receive a warrant in an amount not to exceed a total of One Millions (\$1,000,000.00). If the amount of investment payment claimed exceeds \$1,000,000.00, the establishment may carry over the excess investment payment amount to any subsequent fiscal year during the term of the quality investment agreement and may be paid such amount if the combined amount of carryover and the investment payment claimed in that subsequent fiscal year do not exceed \$1,000,000.00. No more than Five Million Dollars (\$5,000,000.00) in total investment payments shall be payable or paid to a qualified establishment.

(d) **Procedure when claim cannot be verified or is revised.** The following shall apply when a claim cannot be verified and is rejected by the Commission.

(1) The qualified establishment may, within sixty (60) days after the mailing of notification of action by the Commission, file with the Commission a protest under oath, signed by the qualified establishment or a duly authorized agent setting out:

- (A) a statement of the action by the Commission that is protested;
- (B) a statement of the qualified establishment's disagreement with such action; and
- (C) supporting documentation relied on by the qualified establishment in support of its claim.

(2) If the qualified establishment fails to file a written protest within the sixty (60) days then the action of the Commission shall become final and no appeal will be entertained.

(3) A protest to the action of the Commission filed by a qualified establishment shall be governed by 710:1-5-21 through 710:1-5-48.

[Source: Added at 22 Ok Reg 2254, eff 5-25-05]

710:85-9-5. Disclosure of information

The Commission may, upon request, disclose the name of the qualified establishment that has received any incentive payment and the amount of payments received.

[Source: Added at 22 Ok Reg 2254, eff 5-25-05]

710:85-9-6. Limitation on incentive payments

No claim for an incentive payment shall be honored if filed later than two (2) years from the start date designated by the Department.

[Source: Added at 22 Ok Reg 2255, eff 5-25-05]

710:85-9-7. Incentive payments unavailable to delinquent tax reporters/remitters

No incentive payment will be made to any qualified establishment that is delinquent in the filing of any state tax return or report or for which there is an established liability for any state tax until all delinquent reports or returns are filed and the established liability paid.

[Source: Added at 22 Ok Reg 2255, eff 5-25-05]

710:85-9-8. Cessation of incentive payments

In the event an establishment does not meet the terms of the agreement and all provisions of the Act, investment payments shall cease and shall not be resumed, and the agreement shall expire and be void.

[Source: Added at 22 Ok Reg 2255, eff 5-25-05]