

2007

Oklahoma Business Incentives and Tax Information for Data Centers and Related Industry Activities

Cash Payment Programs

1. The Oklahoma Quality Jobs Program (68 O.S. §§ 3601 et seq.)

For more information contact the Oklahoma Department of Commerce at (800) 879-6552 or info@odoc.state.ok.us. For forms visit <http://www.OKcommerce.gov/incentives>.

This incentive program provides quarterly cash payments of up to 5% of newly created gross taxable payroll to a qualifying company. The company must enter into a contract with the Oklahoma Department of Commerce before it may receive any payments based on salaries of any new direct jobs. Payments are made quarterly during the first three years regardless of new payroll level, provided employees are paid at or above the average wage required. After three years if all thresholds are achieved, they may extend for an additional seven years for a total of ten years. A qualified company must achieve a \$2.5 million annualized payroll for the new full-time employees for any four consecutive quarters during its first 12 quarters in the program. If this payroll amount is not achieved, payments cease. The payments received do not have to be paid back. All jobs and wages claimed for benefits must be for Oklahoma residents only.

In order to qualify for the program, the business must offer basic health insurance coverage to all employees whose pay is included in the new payroll figures. Employees must pay no more than 50% of the premium. Initially, a company has 180 days to institute a qualified basic health insurance coverage policy. Thereafter, the plan must permit employees to access the coverage within 180 days of employment. Eighty percent of these employees, whose pay is included in the new payroll, must work at least 30 hours per week. All employees included in the program must be paid a wage equal to the average county wage where the project is located. Presently, however, wage requirements do not exceed \$26,862 in any county regardless of average county wage. The minimum wage requirements do not apply to opportunity zones, as designated by the Department of Commerce. Under certain circumstances, leased employees may be included in payroll calculations.

In order to apply, companies must contact an Oklahoma Quality Jobs Representative from the Department of Commerce at (800) 879-6552. A preliminary cost-benefit analysis will be prepared. This analysis estimates the payments that a project may be eligible to obtain. If the company wishes to pursue application for the program it must then submit a formal application. A contract offer may follow. The Department of Commerce determines eligibility for the initial contract, but the Oklahoma Tax Commission oversees contract payments.

Companies enrolled in the Quality Jobs Program may not use certain income tax credits, sales tax refunds or low-cost loan programs.

Most businesses that qualify receive payments in the range of 4% of new payroll. In certain counties designated as economically challenged a 5% rate automatically applies. This percentage fluctuates by the average weighted salary of the new jobs. See the map of the counties that are designated as automatic 5% areas later in this section.

Companies that have participated in the program for at least 12 months, and which are expanding again, may receive up to a 6% rate on the new contract provided all thresholds are met and the wage level is at least 150% of those wages for which the benefits have been claimed in their initial project. Legislation adopted in 2006 allows certain companies which experience a "Change in Control" which would cause jobs to leave the State to qualify under a "retention" basis. A Change in Control event is defined as more than 50% of the voting interests of the transferring party or more than 50% of the

assets of the establishment are being transferred to new ownership. Such companies may count their existing jobs as “new direct jobs” and receive benefits on them if they meet certain criteria. Among these requirements is to pay all employees at a wage level of at least 125% of the average county wage, and maintain a level of employment as of the date of change in control. Companies participating in the program must meet all other Quality Job Program criteria, and should they leave the state before a 3 year period, must refund all benefits received. Companies interested in this program must complete a “pre-application”, to be reviewed for approval by the Director of the Department of Commerce, before formal application.

A lower annualized payroll threshold of \$1.5 million may apply to the following applicants:

- Food processors with 75% out-of-state sales (see NAICS Manual Nos. 3111 through 3119)
- Firms performing Research, Development and Testing Services as described in NAICS Manual Nos. 541710 and 541380.
- Auxiliary Research and Development Labs of large enterprises.
- Relocations on select former military bases. A lower threshold of \$1 million in new annualized payroll is available to businesses that produce new direct jobs to the State that are equal to or greater than 1% of the total labor force of the county in which they locate. These High Impact Projects can be located in over a third of all Oklahoma counties. The payments, which are set at 2.5% of new qualified payroll, may extend for up to six years, instead of 10 years as set out in the original program.

In addition, a *no payroll threshold* applies to companies locating on a site consisting of at least 10 acres that is also a Superfund renewal site or listed on the National Priorities List. Sites may still qualify if not on the list, if they have been formally deferred to the State, or if they are being remediated pursuant to a clean-up plan approved by the Department of Environmental Quality. The Department of Environmental Quality notifies the Oklahoma Department of Commerce of the qualifying areas and companies.

Qualifying Basic Industries for the Quality Jobs

Programs include the following:

- Manufacturing Industries classified under NAICS Manual Nos. 31, 32, 33, 5111, or 11331.
- Research and Development and Testing Laboratories. See NAICS Manual Nos. 541710 and 541380.
- Central Administrative Offices and Research and Development and Testing Divisions of other establishments or enterprises. See NAICS Manual Nos. 5611, 5612, 518112, 51821, 52232, 56142, 54191, 524291 and 551114.
- Distribution centers for retail or wholesale businesses defined under NAICS Manual No 42, where at least 40% of inventory is shipped out-of-state.
- Transportation by Air (See NAICS Manual No. 4811) if corporate headquarters and some reservations activities are within the state or 75% of air transport sales is to out-of-state consumers.
- Flight Training Services classified under NAICS Manual No. 611512
- The following Service Companies, if 75% of the sales are out-of-state:

NAICS No. 2111 – Certain jobs related to the mining of oil and gas

NAICS Nos. 493, 484, 4884-4889 – Motor Freight Transportation and Warehousing

NAICS Nos. 561510, 561520, 561599 - Arrangement of Passenger Transportation

NAICS No. 541614 - Transportation of Freight or Cargo

NAICS Nos. 51741 and 51791 - Certain Communications Services

NAICS No. 5622 - Certain Refuse Systems that distribute methane gas

NAICS No. 4244 and 4245 - Grocery Wholesale Distributing

NAICS No. 5241 - Insurance Carriers

NAICS Nos. 524210 and 524292 – Insurance Claims Processors only

NAICS No. 561440 - Adjustment and Collection Services

NAICS Nos. 541430, 541860, 541922,

561439, 561492 - Mailing, Reproduction, Commercial Art, Photography and Stenographic Services

NAICS No. 5617 - Services to Dwellings and Other Buildings; excluding 5617-30

NAICS Nos. 5323 and 5324 – Miscellaneous Equipment Rental

NAICS No. 5613 - Personnel Supply Services

NAICS Nos. 5112, 5182, 5191, 5415 – Computer Programming, Data Processing and Other Computer-Related Services

NAICS Nos. 561410, 56142, 561421, 561422, 56143, 561431, 561439 and 5616, 51411 - Miscellaneous Business Services

NAICS No. 6215 - Medical and Dental Laboratories

NAICS Nos. 5412, 5414, 5415, 5416, 5417, 54131, 54133, 54136-54137, 54182, and 541990 - Engineering, Management and Related Services

NAICS Nos. 112120 and 112310- Agricultural Production

- Electric Services Companies, within NAICS Nos. 221111-221122 - Exempt Electric Wholesale Generators, if 90% of energy input is consumed from in-state sources and 90% of sales are out-of-state.

Ad Valorem Tax Exemptions

State Decision (68 O.S. § 2902)

For more information contact the Oklahoma Tax Commission, Ad Valorem Division at (405) 521-3178 or helpmaster@oktax.state.ok.us. For forms visit www.oktax.state.ok.us or contact a local County Assessor to discuss what property may qualify for the exemption.

Certain new and expanding manufacturers, research and development companies, **certain computer services and data processing companies with significant out-of state sales**, aircraft repair companies, oil refineries and certain windpower generators may be eligible for ad valorem tax exemptions for up to five years. **Computer services and data processing companies must meet certain conditions. SIC Industry Group Numbers 5112, 5415 and U.S. Industry Number 334611 and 518112 of the NAICS Manual must have out-of-state sales of at least 50%. Industrial Group Number 5142 of the NAICS Manual must have out-of-state sales of at least 80%. Computer data processing classified in Industrial Group 7374 of the SIC Manual. U.S. Industry Number 514210 of the NAICS Manual latest revision may also be eligible based on payroll or capital investment.**

Threshold requirements are an investment of at least \$250,000 and an addition of \$250,000 in annual payroll in counties with a population of 75,000 or less. If the company is located in a larger county, an additional annualized payroll of at least \$1,000,000 is required. However, if a \$7 million investment is made in new facilities for certain computer service companies, no new payroll is required. Direct replacement, repair, or maintenance of existing machinery or equipment will not qualify.

Firms must make an annual application to the County Assessor by March 15th of the year in which the exemption is requested. Upon approval of the application, the State will reimburse tax dollars to local taxing jurisdictions, which they would have otherwise received. As a result, although application for the exemption is made to the County Assessor, Oklahoma Tax Commission personnel are involved in the final review to determine the exemption. It is the responsibility of the company to apply for the exemption each year.

Sales Tax Exemptions And Refunds

Computer Services And Data Processing (68 O. S. § 1357 [19])

For more information about filing the required affidavit and certification contact the Oklahoma Tax Commission at (405) 521-3133 or helpmaster@oktax.state.ok.us

Oklahoma recognizes the importance of companies engaged in computer services or data processing activities by offering exemptions from sales tax on certain items as follows:

Machinery and equipment used by companies primarily engaged in activities described in SIC Code Industrial Group Numbers 7372 and 7373 that derive at least 50% of their revenues from out-of-state

purchasers or companies primarily engaged in activities described in SIC Code. Industrial Group Number 7374 and derive at least 80% of revenues from out-of-state purchasers. Presentation to vendors of a letter of exemption avoids payment of sales tax at the time of purchase.

Telecommunications (68 O.S. §§ 1354 and 1357 [16] [24])

For more information and certification contact the Oklahoma Tax Commission at (405) 521-3133 or helpmaster@oktax.state.ok.us. For forms visit www.oktax.state.ok.us.

Sales tax exemptions apply to Interstate 1-800, WATS and interstate private-line business telecommunication services and to cell phones sold to a vendor who transfers the equipment as part of an inducement to a consumer to contract for wireless telecommunications.

Refunds

Oklahoma offers sales tax refunds for qualified companies. To qualify, a company submits an Application/Intent to Qualify to the Oklahoma Tax Commission to establish an interest-bearing account. Upon receiving the application and documentation concerning the sales/use taxes to be paid by the applicant or their contractors, the Oklahoma Tax Commission will determine whether a company qualifies. If so, the Oklahoma Tax Commission will immediately set up an account to track sales taxes paid on sales as shown by the invoices submitted.

Interest accrues at the rate of a 3-month Treasury bill from the date invoiced items are approved.

Computer Services / Data Processing / Telecommunications Equipment (68 O.S. § 54003)

For more information contact the Oklahoma Tax Commission at (405) 521-3133 or helpmaster@oktax.state.ok.us. For forms visit www.oktax.state.ok.us.

Oklahoma offers a sales tax refund on the purchase of computers, data processing equipment, related peripherals, telegraph or telecommunications services and equipment.

- Applies to SIC Codes 7372-7374 (Computer services and data processing) and 8731-8734 (Research and Development).
- New or expanding businesses.
- Addition of 10 new full-time employees that have an average salary of \$35,000.
- These new employees must be employed for at least 36 months.
- 50% of annual gross revenues must result from sales to out-of-state buyers, but may include the federal government.
- 75% of annual gross income results from computer services, data processing activities or research and development activities.
- If the company is in SIC Code Industrial Group Number 7374, it must also purchase \$100,000 worth of exempt items.

Note: This refund is not as favorable to computer services and data processing companies as the sales tax exemption found at 68 O.S. § 1357 (19).