CHAPTER 85. VARIOUS TAX INCENTIVES

SUBCHAPTER 13. OKLAHOMA FIVE MAJOR SPORTS LEAGUES REBATE PROGRAM

710:85-13-1. 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 Five Major Sports Leagues Rebate Program Act. [68 O.S. §§ 3951 et seq.]

710:85-13-2. Definitions

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.

"Estimated net direct state benefits" means the calculation by the Department of the tax revenues projected to accrue to the state less the costs projected to accrue to the state. [See: 68 O.S. § 3603]

"Gross payroll" means wages subject to Oklahoma income tax, as defined in 68 O.S. § 2385.1, for sports-league jobs.

"Net benefit rate" means the estimated net direct state benefits computed as a percentage of gross payroll, as set forth in 68 O.S. § 3603. This computation is conducted by the Department and provided to the Commission.

"Sports-league jobs" means full-time-equivalent employment in Oklahoma of employees of a qualified establishment or who are employed by an employment agency or similar entity other than the qualified establishment and who are leased or otherwise provided under contract to the qualified establishment if the job otherwise qualifies as a sports-league job. Sports-league jobs shall not include compensation paid for an athletic contest if the compensation is paid by an entity that does not have its principal place of business in Oklahoma or that does not own real or personal property having a market value of at least $1,000,000 located in Oklahoma, and the employees or independent contractors of such entity are compensated to compete against the employees or independent contractors of a qualified establishment.

"Start date" means the date on which an establishment may begin accruing benefits, and which date shall be determined by the Department. [See: 68 O.S. § 3603]

"Qualified establishment" means an establishment or entity for which the Commission has been notified of an approved application for incentive payments pursuant to the Oklahoma Five Major Sports Leagues Rebate Program Act by the Department.

710:85-13-3. Audits; auditors

(a) **Reports subject to audit.** The quarterly claims filed by the qualified establishment pursuant to the requirements of the Oklahoma Five Major Sports Leagues Rebate Program Act and the rules promulgated thereunder shall be accepted, as filed, by the Commission and are subject to audit.

(b) **Examination by agent of the Commission.** Any representative of the Commission holding a certificate of authority may examine and audit the place of business, the 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 subsection (b) of this Section.

710:85-13-4. Qualified establishments are employers

Qualified establishments are employers for purposes of Oklahoma income tax withholding taxes. [See: 68 O.S. §§ 2385.1 et seq.; OAC 710:90-1-1 through 710:90-7-2]

710:85-13-5. Procedure for filing claim, verification, payment, protest

(a) **Contents of claim.** As soon as practicable after the end of the first complete calendar quarter following the start date, the qualified establishment shall file a claim for payment with the Commission. 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 sports-league jobs during period of claim;
(5) Actual gross payroll of sports-league jobs during period of claim;
(6) Net benefit rate; and
(7) Amount claimed for period.

(b) **Forfeiture conditions.**

(1) If a qualified establishment fails to file any claims within one (1) year of the start date, the Commission shall dismiss the qualified establishment from the Oklahoma Five Major Sports Leagues Rebate Program (Program).
(2) If a qualified establishment files at least one claim but then fails to file another claim within two (2) years of its most recent claim, the Commission may, after consulting with the Department, dismiss the qualified establishment from the Program.
(3) Dismissal from the Program results in forfeiting the right to receive rebate payments based on that contract.

(c) **Verification of claim.** The Commission shall verify the actual gross payroll utilizing information available to the Commission from all resources. All qualified establishments are required to retain documentation to verify the sports-league jobs and rebate amounts claimed. Documents retained shall include all employee names, social security numbers, original hire dates, termination dates, individual wages drawn for each month, and copies of claim forms for the duration of the contract. These records shall be retained for a minimum of three (3) years after the final rebate payment is received by the qualified establishment. In the event the Commission is unable to verify the gross payroll, the Commission may request additional information or documentation from the qualified establishment or may request the qualified establishment revise its claim to match the amount verified by the Commission. If the qualified establishment fails to provide additional information or revise its claim within thirty (30) days of the Commission's request, the Commission may adjust the claim accordingly.

(d) **Payment of claim.** Except as provided in OAC 710:85-13-7, a qualified establishment whose claim has been approved by the Commission shall receive a warrant in an amount not to exceed the net benefit rate multiplied by the actual verified gross payroll for sports-league jobs for the calendar quarter for which the claim is filed.

(e) **Amount of claim**. The amount of payment shall be equal to the net benefit rate multiplied by the actual gross payroll of sports-league jobs for a calendar quarter as verified by the Oklahoma Employment Security Commission. However, the total yearly (or four (4) consecutive quarters) rebate payments shall not cumulatively exceed $10,000,000 in any single year for the entire contract.

(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 an officer/member or a duly authorized representative or agent of the qualified establishment setting out:

(A) A statement of each error alleged to have been committed 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 OAC 710:1-5-21 through 710:1-5-49.

710:85-13-6. Limitation on incentive payments

(a) **Ceiling for total payments limited to "estimated net direct state benefits."** No claim for an incentive payment shall be honored if the amount of the payment combined with all other incentive payments previously made to the qualified establishment on the contract will exceed the "estimated net direct state benefits" established by the Department.

(b) **Quality Jobs.** Entities that have contracts for the Quality Jobs Incentive Program are not eligible for the Program until the Quality Jobs Incentive Program contract expires.

710:85-13-7. 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 that has an established liability for any state tax until the delinquent report(s) and/or return(s) is filed and established liability paid in full.

710:85-13-8. Cessation, suspension, resumption and repayment of incentive payments

(a) Rebate payments will not be made if:

(1) The actual verified gross payroll of the qualified establishment for four (4) consecutive calendar quarters does not equal or exceed $10,000,000 within three (3) years of the start date; or
(2) The actual verified gross payroll of the qualified establishment does not equal or exceed the applicable amount specified in 68 O.S. § 3604, in any quarter of the contract period after three (3) years from the start date.

(b) A qualified establishment whose incentive payments have ceased under paragraph (a)(1) of this Section will be dismissed from the Program and may not make a new or renewal application for rebate payments to the Department until twelve (12) months from the last day of the last month of the three-year period the actual verified gross payroll was not achieved.

(c) A qualified establishment whose incentive payments have ceased under paragraph (a)(2) of this Section may not receive any further incentive payments unless and until actual verified gross payroll equals or exceeds the applicable amount specified in 68 O.S. § 3604.

(d) A qualified establishment shall be required to repay all rebate payments received if the qualified establishment is determined by the Commission to no longer have business operations in Oklahoma within three (3) years from the beginning of the calendar

quarter for which the first rebate payment claim is filed. At a minimum, a qualified establishment with its business operations in Oklahoma will be performing its regularly scheduled home games in this State.

710:85-13-9. 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 a 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 an officer/member or a duly authorized representative or agent of the qualified establishment setting out:

(A) A statement of each error alleged to have been committed 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) **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 OAC 710:1-5-21 through 710:1-5-49.