

ENROLLED SENATE
BILL NO. 523

By: Fisher of the Senate

and

Roach, Ervin, Sullivan
(Leonard), Tyler Glover,
Adkins, Bengel, Bryant,
Liotta, Nance, Perry, Smith
(Hopper) Thornbrugh and
Wright of the House

An Act relating to revenue and taxation; providing credit against certain taxes; providing for transferability thereof; defining terms; specifying qualifications for establishments for investments therein to qualify for tax credit; disallowing or allowing for recapture of tax credit under certain conditions; specifying duties of Oklahoma Tax Commission; specifying maximum amount of credit and for priority of claims therefor; specifying amount of credit; requiring certain establishments to maintain record of investments and make certain notification to Tax Commission; providing that incentive payments under Oklahoma Quality Jobs Program Act not be received by certain establishments for certain time period; providing for distribution of such payments; providing for payment of amount of incentive payment in excess of amount of tax credit; providing for apportionment of certain funds; providing that certain establishments not be entitled to certain incentive payments; allowing establishment to make certain election and requiring notification to Tax Commission; prohibiting certification of certain establishments for determining eligibility for tax credit; providing for codification; and declaring an emergency.

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 2357.28 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. For tax years beginning after December 31, 1999, and ending before January 1, 2006, there shall be allowed to an investor making an eligible investment a credit against the tax imposed by Section 2355 of Title 68 of the Oklahoma Statutes or Section 624 of Title 36 of the Oklahoma Statutes. The credit shall be in the amount as set forth in subsection F of this section.

B. The amount of the credit shall be freely transferable to subsequent transferees. Any person to whom or to which a tax credit is transferred shall have only such rights to claim and use the credit under the terms that would have applied to the entity by whom or by which the tax credit was transferred. The provisions of this subsection shall not limit the ability of a tax credit transferee to reduce the tax liability of the transferee regardless of the actual tax liability of the tax credit transferor for the relevant taxable period.

C. As used in this section, "eligible investment" means an investment made during a period not earlier than January 1, 1999, and not later than December 31, 2000, in an establishment that:

1. Is headquartered in this state or is ultimately controlled by an entity headquartered in this state; and

2. Has been certified by the Tax Commission as meeting the following minimum qualifications:

- a. is included within the definition of "basic industry" as set forth in division (9) of subparagraph a of paragraph 1 of subsection A of Section 3603 of Title 68 of the Oklahoma Statutes and has been preapproved by the Oklahoma Department of Commerce to receive incentive payments pursuant to the Oklahoma Quality Jobs Program Act. The Department shall establish a process for preapproval of applicants for the Oklahoma Quality Jobs Program Act for purposes of this subparagraph. The establishment shall agree to submit such information as may be required under this act and the Oklahoma Quality Jobs Program Act to allow the Tax Commission to determine the amount of the tax credit allowed pursuant to the provisions of this section and the amount of incentive payments allowed pursuant to the Oklahoma Quality Jobs Program Act for purposes of subsection I of this section,
- b. has equity capitalization of not less than Ten Million Dollars (\$10,000,000.00),
- c. can demonstrate commitments from not fewer than twenty entities doing business in this state, with such entities having in the aggregate not fewer than two thousand (2,000) employees in this state, to utilize the services of the establishment in providing nonstop air transportation from this state to either the west coast or the east coast of the continental United States, or both. Such commitments, at a minimum, may be in the form of letters of intent from authorized officers of such entities which demonstrate a best efforts intention to utilize such air transportation, and
- d. has received a certification from one or more local governmental entities in this state to accept responsibility for funding in an amount equal to one-third (1/3) of the amount by which the tax credit

provided herein exceeds the amount of incentive payments allowed to the establishment pursuant to the Oklahoma Quality Jobs Program Act as provided in subsection I of this section. As used in this section, "local governmental entity" shall include, but not be limited to, a county, municipality or public authority or trust created pursuant to the provisions of Section 176 of Title 60 of the Oklahoma Statutes of which a county or municipality or combination thereof, is a beneficiary. The certification provided for herein shall include a determination by the Tax Commission that the local governmental entity has or will have resources to meet its obligation to accept responsibility for funding in an amount equal to one-third (1/3) of the amount by which the tax credit provided herein exceeds the amount of incentive payments allowed to the establishment and that the form of the obligation is one enforceable by legal remedies available under the laws of the State of Oklahoma.

The tax credit provided for herein shall not be allowed or, if already claimed, shall be subject to recapture, with respect to any amount of an eligible investment made which is subsequently refunded or returned to the investor.

Nothing in this subsection is intended to preclude an establishment from utilizing a wholly owned operating subsidiary to perform its flight and related operations to meet the requirements of this subsection.

D. The Oklahoma Tax Commission shall:

1. Certify, upon request of an authorized agent or representative of an establishment described by paragraph 2 of subsection C of this section, that the establishment for which the certification is sought meets the qualifications prescribed by subparagraphs a, b, c and d of paragraph 2 of subsection C of this section. The certification shall be in writing and signed by an authorized representative of the Tax Commission and, for purposes of determining qualifications of an establishment in which an investment may be eligible for the credit authorized by this section, shall be binding upon the Tax Commission; and

2. Issue a certificate to an investor that provides adequate documentation of qualification for the credit authorized by this section even if the credit may not be claimed until after the date upon which the certificate is requested. Upon issuance, the certificate shall be evidence that an investor or a transferee of the original tax credit claimant submitting the certificate, or a certified copy thereof, with the relevant tax return or other form, has the legal right to exercise the credit in order to reduce the relevant tax liability for the period authorized by this section.

E. The maximum amount of all eligible investments for which tax credits may be claimed under this section shall be Thirty Million Dollars (\$30,000,000.00). If more than one establishment has been certified by the Tax Commission pursuant to the provisions of

subsection D of this section, the investors in the first such approved establishment shall be entitled to a credit based on their investment of the lesser of their eligible investment or Thirty Million Dollars (\$30,000,000.00). The investors in the second such approved establishment shall then be entitled to a credit based on their investment of the lesser of their eligible investment or the difference between the total eligible investments in previously approved establishments and Thirty Million Dollars (\$30,000,000.00). This same procedure will apply for all subsequently approved establishments. If the amount of eligible investments exceeds the amount upon which the tax credit may be claimed as provided herein, investors shall be allowed a share of the amount of the available tax credit in order of the dates of receipt of certification therefor by the Tax Commission pursuant to the provisions of paragraph 1 of subsection D of this section.

F. The amount of the tax credit allowed pursuant to the provisions of subsection A of this section shall be deemed fully earned as of the date of the investment and shall be fully redeemable as follows:

<u>Period for Which Tax Liability Determined</u>	<u>Credit Allowed</u>
Tax year subsequent to year of eligible investment	10.6% of eligible investment
Second tax year subsequent to year of eligible investment	11.236% of eligible investment
Third tax year subsequent to year of eligible investment	11.910% of eligible investment
Fourth tax year subsequent to year of eligible investment	12.624% of eligible investment
Fifth tax year subsequent to year of eligible investment	13.381% of eligible investment

G. The Tax Commission shall develop and issue appropriate forms and instructions to enable investors to claim the tax credit provided for in this section.

H. An establishment in which an eligible investment qualifies for a credit authorized by this section shall maintain a record of investment made in the establishment for the period beginning January 1, 1999, and ending December 31, 2000. The establishment shall notify the Tax Commission not later than January 31, 2001, of the total investment amount for such period. Any such establishment which refunds or returns any amount of an eligible investment to the investor shall notify the Tax Commission in writing of the amount and recipient of such refunds or returns. The Tax Commission shall

compute the maximum amount of credits available pursuant to this section based upon notification of the investment amount transmitted to the Tax Commission by the establishment.

I. An establishment in which eligible investments qualify for the tax credit authorized by this section shall not receive incentive payments pursuant to the Oklahoma Quality Jobs Program Act until the total of such incentive payments the establishment would otherwise receive exceeds the total amount of the credit authorized by this section as computed by the Tax Commission pursuant to subsection H of this section. The amount of incentive payments for any year which would otherwise be paid to the establishment shall be distributed as follows:

1. If the amount of such incentive payments equals or exceeds the amount of the tax credit for the year, the amount of such payments which is equal to the amount of the tax credit shall be apportioned as if collected from the tax imposed by Section 2355 of Title 68 of the Oklahoma Statutes or Section 624 of Title 36 of the Oklahoma Statutes according to which tax the credit was claimed against. The amount of such payments which is in excess of the amount of the tax credit shall be retained by the Tax Commission to be paid as provided for in this paragraph for subsequent years for which the tax credit is allowed to the establishment;

2. If the amount of such incentive payments and any amount retained by the Tax Commission pursuant to the provisions of paragraph 1 of this subsection is less than the amount of the tax credit for the year, the amount of such deficit shall be paid as follows:

- a. notwithstanding the provisions of Section 1727 of Title 69 of the Oklahoma Statutes, the Tax Commission shall withhold a portion of the taxes levied and collected pursuant to the provisions of paragraph 1 of subsection A of Section 500.4 of Title 68 of the Oklahoma Statutes which would otherwise be paid over to the Department of Transportation by the Oklahoma Turnpike Authority pursuant to the provisions of paragraph (2) of subsection (d) of Section 1730 of Title 69 of the Oklahoma Statutes equal to the amount of two-thirds (2/3) of the deficit, and
- b. the local governmental entity which has certified that it will accept responsibility for funding pursuant to the provisions of subparagraph d of paragraph 2 of subsection C of this section shall pay to the Tax Commission an amount equal to the amount of one-third (1/3) of the deficit.

The Tax Commission shall apportion all funds collected pursuant to the provisions of this paragraph as if collected from the tax imposed by Section 2355 of Title 68 of the Oklahoma Statutes or Section 624 of Title 36 of the Oklahoma Statutes according to the tax against which the credit was claimed; and

3. If any amount is withheld by or paid to the Tax Commission pursuant to the provisions of paragraph 2 of this subsection, two-thirds (2/3) of the amount of incentive payments to be subsequently paid to the establishment shall be apportioned by the Tax Commission to the Department of Transportation and one-third (1/3) of the amount of such incentive payments shall be paid to the local governmental entity which has made one or more payments pursuant to the provisions of subparagraph b of paragraph 2 of this subsection until such time as all amounts paid pursuant to the provisions of paragraph 2 of this subsection are repaid.

J. No establishment in which investments qualify for the credit allowed by this section shall be entitled to payment of any incentive payments accrued prior to the date authorized for the initial eligible investments as provided by this subsection.

K. Notwithstanding the provisions of this section, an establishment may, prior to the issuance of a tax credit with respect to the establishment pursuant to the provisions of this section, elect to receive incentive payments pursuant to the provisions of the Oklahoma Quality Jobs Program Act in lieu of allowing the tax credit provided for herein, in which case it shall so notify the Tax Commission in writing and the provisions of this section shall not be applicable.

L. Except as provided by subsection K of this section, no establishment defined by this section which would otherwise qualify for incentive payments pursuant to the provisions of the Oklahoma Quality Jobs Program Act may receive such incentive payments prior to January 1, 2001.

M. No establishment defined by this section which has made application to the Oklahoma Department of Commerce or which has executed any agreement with the Oklahoma Department of Commerce with respect to the receipt of incentive payments pursuant to the provisions of the Oklahoma Quality Jobs Program Act or which has received any incentive payment pursuant to the Oklahoma Quality Jobs Program Act prior to the effective date of this act may be certified as an establishment for purposes of determining eligibility for the credit authorized by this section.

SECTION 2. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 26th day of May, 1999.

President of the Senate

Passed the House of Representatives the 27th day of May, 1999.

Speaker of the House of
Representatives