

HOUSE OF REPRESENTATIVES

Wednesday, March 24, 1999

**Committee Substitute for
ENGROSSED
Senate Bill No. 523**

COMMITTEE SUBSTITUTE FOR ENGROSSED SENATE BILL NO. 523 -- By FISHER of the Senate and ROACH, ERVIN, SULLIVAN (Leonard) and TYLER of the House.

An Act relating to air transportation incentives; authorizing credit against certain taxes for investment; authorizing transferability of credit; prescribing rights of tax credit transferees; defining term; providing for certification by Oklahoma Tax Commission; requiring certain certificates; prescribing limit on eligible investment; prescribing procedures for determination of credit amount under certain circumstances; prescribing credit amounts; requiring forms and instructions; requiring disclosure of certain invested amount; requiring computation of tax credits available; prohibiting receipt of certain incentive payments until occurrence of certain event; prohibiting receipt of certain incentive payments until specified date; prohibiting receipt of incentive payments accrued prior to certain date; prohibiting receipt of certain incentive payments by certain establishments; 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 entity 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 other taxpayers. Any person to whom or to which a tax credit is transferred shall have only such rights to claim and use the credit for the relevant taxable period as would have been enforceable by 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, if such establishment is controlled by one (1) or more entities, the entity which ultimately controls the establishment shall also be 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,

b. has equity capitalization of not less than Ten Million Dollars (\$10,000,000.00), and

c. can demonstrate commitments from not fewer than twenty (20) entities doing business in this state, with such employers having in the aggregate not fewer than two thousand (2,000) employees in this state, for 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. Nothing herein is intended to prevent the establishment from having a wholly owned operating subsidiary from performing the operations set forth in this subparagraph.

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 and c of paragraph 2 of subsection C of this section. The certification shall be in writing and signed by an authorized representative of the Oklahoma Tax Commission and, for purposes of determining qualifications of an establishment for which an investment may be eligible for the credit authorized by this section, shall be binding upon the Oklahoma Tax Commission; and

2. Issue a certificate to a person or entity that provides adequate documentation of the occurrence of events qualifying for the credit authorized by this section even if the credit may not be claimed until a date after the date upon which the certificate is requested. Upon issuance, the certificate shall be evidence that a taxpayer or a transferee or assignee 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 eligible investment 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 C 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.

F. The amount of the tax credit allowed pursuant to the provisions of subsection A of this section shall be as follows:

Period for Which

Tax Liability Determined

Credit Allowed

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 entities to claim the tax credit provided for in this section.

H. An establishment in which 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 transmit to the Oklahoma Tax Commission not later than January 31, 2001, the total investment amount for such period. The Oklahoma Tax Commission shall compute the maximum amount of credits available pursuant to this section based upon the investment amount transmitted to the Tax Commission by the establishment.

I. An establishment which is otherwise qualified to receive incentive payments pursuant to the provisions of the Oklahoma Quality Jobs Program Act and the eligible investment in which qualifies for the tax credit authorized by this section shall not receive the incentive payments pursuant to the Oklahoma Quality Jobs Program Act until the total of 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. No such establishment shall be entitled to payment of any incentive payments accrued prior to the date authorized for the initial receipt of incentive payments as provided by this subsection.

J. For purposes of establishments defined by this section, no such establishment 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.

K. For purposes of establishments defined by this section, no such establishment 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.