

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

COMMITTEE SUBSTITUTE  
FOR  
HOUSE BILL NO. 2315

By: Roach

COMMITTEE SUBSTITUTE

An Act relating to revenue and taxation; amending 68 O.S. 2001, Section 2357.28, which relates to tax credit for certain eligible investment; modifying provisions related to investment; modifying definitions; authorizing tax credits for investment occurring within certain period of time; prescribing procedures for usage of credits; modifying references; providing statement of legislative intent; providing for noncodification; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 68 O.S. 2001, Section 2357.28, is amended to read as follows:

Section 2357.28 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 this title or Section 624 or 628 of Title 36 of the Oklahoma Statutes. The credit may be used in the payment of estimated tax payments for the tax imposed by Section 624 or 628 of Title 36 of the Oklahoma Statutes. The credit shall be in the amount as set forth in subsection F or subsection G of this section.

B. The amount of the credit shall be freely transferable to subsequent transferees.

C. As used in this section:

1. "Capitalization commitment" means a commitment by a local governmental entity or the beneficiary thereof or a private entity, whether by contract, letter agreement, terms sheet, resolution,

ordinance or indenture, to provide funds, personal property or real property. "Capitalization commitment" shall also mean, in circumstances limited to local governmental entities or the beneficiaries thereof, a moral obligation to provide future funds, personal property or real property. To provide funds, personal property or real property shall include but not be limited to providing funds, personal property or real property in the form of security or collateral to a financial lending institution in support of a revenue bond, financial obligation or other evidence of indebtedness issued by a local governmental entity;

2. "Consideration" means, but is not limited to, funds, personal property or real property and a capitalization commitment. The source of the funds or other consideration for the investment by one or more investors, whether borrowed or otherwise, is irrelevant to the determination of investment. The fact that the source of funds is from a financial lending institution is also irrelevant;

3. "Eligible investment" means an investment made during a period not earlier than January 1, 1999, and not later than December 31, ~~2000~~ 2002, in an establishment that:

- a. is headquartered in this state or is ultimately controlled by an entity headquartered in this state, and
- b. has been certified by the Tax Commission as meeting the following minimum qualifications:
  - (1) is included within the definition of "basic industry" as set forth in division ~~(9)~~ (7) of subparagraph a of paragraph 1 of subsection A of Section 3603 of this title 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 division. The establishment shall agree to submit such information as may be required under this section 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 ¶ K of this section,

- (2) 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
- (3) has received, or its parent has received, in calendar year 2000, a capitalization commitment in the amount of Fifteen Million Dollars (\$15,000,000.00) or more from a local governmental entity, including, but not limited to, proceeds from the issuance of revenue bonds, financial obligations or other evidences of indebtedness. For purposes of this section and

notwithstanding the provisions of Section 5063.4 of Title 74 of the Oklahoma Statutes or any other laws to the contrary, credit enhancement by the Oklahoma Development Finance Authority through the Oklahoma Credit Enhancement Reserve Fund up to a maximum of Ten Million Dollars (\$10,000,000.00) is hereby authorized, subject to the approval of the Executive and Legislative Bond Oversight Commissions pursuant to Section 695.8 of Title 62 of the Oklahoma Statutes.

The tax credit provided for in this section shall not be allowed or, if already claimed, shall be subject to recapture as to the initial investor or investors, with respect to any amount of an eligible investment made which is subsequently refunded or returned to any such investor. Any such recapture shall only apply as to that part of the tax credit as is associated with the investment refunded or returned.

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;

4. "Financial lending institution" means a bank, credit union, savings and loan association, commercial finance company, governmental agency, including a local governmental entity, or other entity principally engaged in investment, finance or the extension of credit;

5. "Investment" means:

- a. consideration in exchange for "equity and near-equity", which means common stock, preferred stock, warrants or other rights to subscribe to stock or its equivalent, or an interest in a partnership, or debt that is convertible into or entitles the holder to receive upon

its exercise, common stock, preferred stock, royalty interest, or an interest in a partnership,

- b. consideration in exchange for "subordinated debt", which means indebtedness that is subordinated to other indebtedness of the issuer that has been issued or is to be issued by a financial lending institution, or
- c. in the event of a capitalization commitment in accordance with the provisions of division (3) of subparagraph b of paragraph 3 of this subsection, where a local governmental entity is issuing revenue bonds, financial obligations or other evidences of indebtedness, the receipt of the proceeds of revenue bonds, financial obligations or other evidences of indebtedness issued by a local governmental entity by a parent and the subsequent transfer of such proceeds to a subsidiary.

Actions of the establishment to use such investment as security for indebtedness, even as security for that of another party, or other uses, in compliance with loan covenants as may be part of the issuance of revenue bonds, financial obligations or other evidences of indebtedness, shall not affect its determination as investment. For purposes of this section, investment in an establishment which has, prior to February 1, 2002, been certified as an eligible establishment by the Oklahoma Tax Commission shall be treated as an eligible investment in such establishment for the purposes of this section with respect to investment made at any time prior to December 31, 2002;

6. "Investor" means one or more persons or entities making an investment and may include one or more persons or entities which wholly or partially own the establishment;

7. "Local governmental entity" includes, but is not limited to, a county, municipality or public authority or trust created pursuant

to the provisions of Title 60 of the Oklahoma Statutes of which the state or a county or municipality or combination thereof, is a beneficiary, or a state public authority or trust;

8. "Parent" means an entity owning fifty-one percent (51%) or more of the establishment and providing fifty-one percent (51%) or more of the investment in the establishment; and

9. "Subsequently refunded or returned", when used in reference to an eligible investment, means an actual redemption by the establishment of the securities or other indicia of ownership in the establishment received by the investor from the investor's investment. The failure to allow the tax credits or the recapture of the tax credits shall not affect the validity of the tax credits in the hands of a transferee of the initial investor or subsequent transferees. Provided, an investor to whom an eligible investment, or portion thereof, is subsequently refunded or returned shall reimburse the Tax Commission the amount of any credits claimed by a transferee with respect to any such amount.

D. The Oklahoma Tax Commission shall:

1. Certify, upon request of an authorized agent or representative of an establishment described by paragraph 3 of subsection C of this section, that the establishment for which the certification is sought meets the qualifications prescribed by subparagraphs a and b of paragraph 3 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 Except as otherwise provided by subsection G of this section, 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 Except as otherwise provided by subsection G of this section, 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:

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. An investor or investors in an establishment that has been approved for eligible investment before February 1, 2002, pursuant to this section may receive tax credits for additional eligible investment in such establishment during the period February 1, 2002, to December 31, 2002. The maximum amount of such additional tax credits shall be Nine Million Dollars (\$9,000,000.00) with One Dollar (\$1.00) of tax credit for each dollar of eligible investment. The tax credits authorized by this subsection may not be used as to any tax obligation that is due and payable before July 1, 2003. For the fiscal year that begins July 1, 2003, and the fiscal years that begin July 1, 2004, and July 1, 2005, the amount of tax credits authorized by this subsection which may be used during each such fiscal year shall not exceed Three Million Dollars (\$3,000,000.00).

H. The amount of a tax credit allowed pursuant to the provisions of this section not used in payment of taxes due in the year in which such credit is allowed pursuant to subsection F or subsection G of this section may be used as a credit against



subsequent tax liability of the investor or a subsequent transferee for a period not to exceed three (3) years from the year in which such credit is originally allowed.

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

~~I.~~ J. 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~~ 2002. The establishment shall notify the Tax Commission not later than January 31, ~~2001~~ 2003, 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.

~~J.~~ K. 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 ~~I.~~ J. 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

this title or Section 624 or 628 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, 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 this title 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 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 this title or Section 624 or 628 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, the amount of incentive payments to be subsequently paid to the establishment shall be apportioned by the Tax Commission to the Department of Transportation until such time as all amounts paid pursuant to the provisions of paragraph 2 of this subsection are repaid.

~~K.~~ L. 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.

~~L.~~ M. 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.

~~M.~~ N. Except as provided by subsection ~~L~~ M 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.

~~N.~~ O. 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 June 9, 1999, may be certified as an establishment for purposes of determining eligibility for the credit authorized by this section.

SECTION 2. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

The Legislature finds that the monies to be derived from the transfer of the tax credits authorized by this act are intended to qualify as a nonshareholder contribution to capital within the meaning of Section 118 of the United States Internal Revenue Code of 1986, as amended.

SECTION 3. 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.

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