

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

SENATE BILL 55

By: Capps

AS INTRODUCED

An Act relating to revenue and taxation; amending Section 1, Chapter 203, O.S.L. 1999 (68 O.S. Supp. 2000, Section 2357.13); providing credit against certain taxes; providing for transferability thereof; defining terms; specifying qualifications for qualified space transportation vehicle providers 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 applicable percentage of investment that may be claimed as credit; allowing unused credit to be carried forward for certain period; providing for development and issuance of forms and instructions; requiring certain qualified space transportation vehicle providers 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 qualified space transportation vehicle providers not be entitled to certain incentive payments; allowing qualified space transportation vehicle provider to make certain election and requiring notification to Tax Commission; prohibiting certification of certain establishments for determining eligibility for tax credit; providing that certain credit not be allowed for certain projects; 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 2357.42 of Title 68, unless there is created a duplication in numbering, reads as follows:

Section 2357.42 A. For tax years beginning after December 31, 2000, and ending before January 1, 2011, 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 or 628 of Title 36 of the Oklahoma Statutes, in an amount equal to the applicable percentage, as specified in subsection G of this section, of the aggregate amount paid during the taxable year for the purchase of qualified space transportation vehicle provider stock. 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 G of this section.

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

C. As used in this section:

1. "Eligible investment" means an investment made during a period not earlier than November 15, 2000, and not later than December 31, 2010, in a qualified space transportation vehicle provider 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 Oklahoma Tax Commission as being included within the definition of "basic industry" as set forth in division (1) 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 division. The qualified space transportation vehicle provider 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. "Qualified space transportation vehicle provider" means any commercial provider organized under the laws of this state as a corporation or a limited liability company and engaged in designing, developing, producing, or operating commercial space transportation vehicles in this state;

3. "Qualified space transportation vehicle provider stock" means any common stock in a C corporation or any stock in a limited liability company registered in this state if:

- a. as of the date of issuance, such corporation or limited liability company is a qualified space transportation vehicle provider,
- b. such stock is acquired by the taxpayer at its original issue, directly or through an underwriter, in exchange for money or other property, not including stock, and
- c. the proceeds of such issue are used by such issuer during the thirty-six-month period beginning on the date of issuance in substantial compliance with the issuer's projected usage submitted to the United States Secretary of Transportation; and

4. "Space transportation vehicle" includes all types of vehicles, whether now in existence, developed in the future, or currently under design, development, construction, reconstruction, or reconditioning, constructed in this state and owned by a qualified space transportation vehicle provider, for the purpose of operating in, or transporting a payload to, from, or within, outer

space, or in suborbital trajectory, and includes any component of such vehicle not specifically designed or adapted for a payload.

D. 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 as follows:

1. 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.

"Subsequently refunded or returned", when used in reference to an eligible investment, means an actual redemption by the qualified space transportation vehicle provider of the securities or other indicia of ownership in the qualified space transportation vehicle provider received by the investor from the investor's investment; or

2. If, during the three-year period beginning on the date the qualified space transportation vehicle provider stock was purchased by the initial investor or investors, the issuer of such stock ceases to meet the requirements of this section.

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.

E. The Tax Commission shall:

1. Certify, upon request of an authorized agent or representative of a qualified space transportation vehicle provider, that the qualified space transportation vehicle provider for which the certification is sought meets the qualifications prescribed by 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 a qualified space transportation vehicle provider 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.

F. The maximum amount of all eligible investments for which tax credits may be claimed under this section shall be _____ Dollars (\$0.00). If more than one qualified space transportation vehicle provider has been certified by the Tax Commission pursuant to the provisions of subsection E of this section, the investors in the first such approved qualified space transportation vehicle provider shall be entitled to a credit based on their investment of the lesser of their eligible investment or _____ Dollars (\$0.00). The investors in the second such approved qualified space transportation vehicle provider 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 qualified space transportation vehicle providers and _____ Dollars (\$0.00). This same procedure will apply for all subsequently approved qualified space transportation vehicle providers. 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 E of this section.

G. The applicable percentage of the investment in qualified space transportation vehicle provider stock that may be claimed as a tax credit pursuant to the provisions of subsection A of this section shall be as follows:

<u>Taxable year</u>	<u>Applicable Percentage</u>
2000	50%
2001	50%
2002	40%
2003	30%
2004 and 2005	20%
2006 through 2010	10%
2011 and thereafter	-0-

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 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.

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.

J. A qualified space transportation vehicle provider in which an eligible investment qualifies for a credit authorized by this section shall maintain a record of investment made in the qualified space transportation vehicle provider for the period beginning November 15, 2000, and ending December 31, 2010. The qualified space transportation vehicle provider shall notify the Tax Commission not later than January 31 of each year of the total investment amount for the preceding calendar year. Any such qualified space transportation vehicle provider 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 qualified space transportation vehicle provider.

K. A qualified space transportation vehicle provider 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 qualified space transportation vehicle provider would otherwise receive exceeds the total amount of the credit authorized by this section as computed by the Tax Commission pursuant to subsection J of this section. The amount of incentive payments for any year which would otherwise be paid to the qualified space transportation vehicle provider 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 or 628 of Title 36 of the Oklahoma Statutes according to the tax against which the credit was claimed. 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 qualified space transportation vehicle provider;

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 Title 68 of the Oklahoma Statutes which would otherwise be paid 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 Title 68 of the Oklahoma Statutes 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 qualified space transportation vehicle provider 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.

L. A qualified space transportation vehicle provider in which investments qualify for the credit allowed by this section shall not be entitled to payment of any incentive payments accrued prior to November 15, 2000, under the Oklahoma Quality Jobs Program Act.

M. Notwithstanding the provisions of this section, a qualified space transportation vehicle provider may, prior to the issuance of a tax credit with respect to the qualified space transportation vehicle provider 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.

N. Except as provided by subsection L of this section, no qualified space transportation vehicle provider 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, 2010.

SECTION 2. AMENDATORY Section 1, Chapter 203, O.S.L. 1999 (68 O.S. Supp. 2000, Section 2357.13), is amended to read as follows:

Section 2357.13 A. For taxable years beginning after December 31, 1999, there shall be allowed a credit against the tax imposed by Section 2355 of ~~Title 68 of the Oklahoma Statutes~~ this title for investments in qualifying projects, the purpose of which is to encourage the development of commercial space industries in this state.

B. As used in this section:

1. "Commencement of operations" means the beginning of active operations by a qualifying business of the principal function for which a qualifying project was constructed;

2. "Cumulative capital investment" means the total capital investment in land, buildings, and equipment made in connection with a qualifying project during the period from the beginning of construction of the project to the commencement of operations;

3. "Eligible capital costs" means all expenses incurred by a qualifying business in connection with the acquisition, construction, installation, and equipping of a qualifying project during the period from the beginning of construction of the project to the commencement of operations, including, but not limited to:

- a. costs of acquiring, constructing, installing, equipping, and financing a qualifying project, including all obligations incurred for labor and obligations to contractors, subcontractors, builders, and materialmen,

- b. costs of acquiring land or rights to land and any cost incidental thereto,
- c. costs of architectural and engineering services, including, but not limited to, test borings, surveys, estimates, plans and specifications, preliminary investigations, environmental mitigation, and supervision of construction, as well as the performance of all duties required by or consequent to the acquisition, construction, installation, and equipping of a qualifying project, and
- d. costs associated with the installation of fixtures and equipment, surveys, site tests and inspections, subsurface site work and excavation, removal of structures, roadways, and other surface obstructions, filling, grading, paving, and providing for drainage, storm water retention, and installation of utilities, and offsite construction of utility extensions to the boundaries of the property.

"Eligible capital costs" shall not include the cost of any property previously owned or leased by the qualifying business;

4. "Jobs" means full-time-equivalent positions, as such term is consistent with terms used by Oklahoma Employment Security Commission and the United States Department of Labor for purposes of unemployment tax administration and employment estimation, resulting directly from a project in this state. Such term does not include temporary construction jobs involved in the construction of the project facility;

5. "Qualifying business" means a business which establishes a qualifying project in this state and which is certified by the Oklahoma Tax Commission to receive tax credits pursuant to the provisions of this section; and

6. "Qualifying project" means a new or expanding facility in this state or a combination of two new or expanding facilities in this state which facility or combination of facilities creates at least one hundred (100) new jobs in this state and is engaged in an industry which the Oklahoma Space Industry Development Authority is authorized to promote.

C. The credit provided for in this section shall be in the amount of five percent (5%) of the eligible capital costs generated by a qualifying project. In order to qualify to receive the credit, application shall be made to the Tax Commission, which shall certify the amount of eligible capital costs generated by a qualifying project and the maximum amount of the tax credit to which the taxpayer will be entitled. The credit shall be granted only against the tax liability upon income generated by or arising out of the qualifying project and shall not exceed the following percentages of the corporate income tax liability upon income generated by or arising out of a qualifying project for any tax year in which a credit may be claimed:

1. One hundred percent (100%) for a qualifying project which results in a cumulative capital investment of more than One Hundred Million Dollars (\$100,000,000.00);

2. Seventy-five percent (75%) for a qualifying project which results in a cumulative capital investment of more than Fifty Million Dollars (\$50,000,000.00), but not exceeding One Hundred Million Dollars (\$100,000,000.00); and

3. Fifty percent (50%) for a qualifying project which results in a cumulative capital investment of Twenty-five Million Dollars (\$25,000,000.00) or more, but not exceeding Fifty Million Dollars (\$50,000,000.00).

A qualifying project which results in a cumulative capital investment of less than Twenty-five Million Dollars (\$25,000,000.00)

shall not be eligible for the credit. No credit may be claimed for investments made prior to July 1, 1999.

The amount of any credit allowed but not used in any tax year may be carried over in order to each of the four (4) years following the year of qualification subject to the limitations provided in this subsection. In no event shall any credit granted pursuant to the provisions of this section be transferable or refundable.

D. The credit allowed pursuant to the provisions of this section shall not be allowed for any project in which a credit is claimed pursuant to the provisions of Section 1 of this act.

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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