

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

SENATE BILL 817

By: Capps of the Senate

and

Covey of the House

AS INTRODUCED

An Act relating to revenue and taxation; amending 68 O.S. 2001, Section 2357.42, which relates to income tax credits; modifying amount of eligible investments in space transportation vehicle providers for which tax credit may be granted; modifying information which must be provided to Oklahoma Tax Commission by qualified space transportation vehicle provider; and declaring an emergency.

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

SECTION 1. AMENDATORY 68 O.S. 2001, Section 2357.42, is amended to read as follows:

Section 2357.42 A. For tax years beginning after December 31, 2000, and ending before January 1, 2007, 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. 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 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:

1. "Eligible investment" means an investment made during a period not earlier than January 1, 2001, and not later than December 31, 2002, 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,
- b. has been certified by the Oklahoma Tax Commission as meeting the following minimum qualifications:

- (1) is 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 or the Former Military Facility Development Act. The Department shall establish a process for preapproval of applicants for the Oklahoma Quality Jobs Program Act or the Former Military Facility Development 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 or the Former Military Facility Development 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 or the Former Military Facility Development Act for purposes of subsection K of this section,

- (2) has equity capitalization of not less than Ten Million Dollars (\$10,000,000.00), and
- (3) has received a commitment by a local governmental entity, whether by contract, letter agreement, terms sheet, resolution, ordinance or indenture, to provide funds, personal property or real property in the aggregate amount of Fifteen Million Dollars (\$15,000,000.00) or more which will be utilized by one or more qualified space transportation vehicle providers. For purposes of this division, such property may include personal or real property owned by a local governmental entity which has been leased to a state authority pursuant to a long-term lease. A tax credit shall not be allowed to an investor making an eligible investment in a qualified space transportation vehicle provider or shall be subject to recapture if previously allowed if the qualified space transportation vehicle provider in which the investment was made fails to make use of such funds or property within three (3) years of the date the tax credit was allowed;

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; and

3. "Space transportation vehicle" includes all types of vehicles or orbital or suborbital spacecraft, 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 or spacecraft 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 with respect to any amount of an eligible investment made which is subsequently refunded or returned to the investor.

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 subparagraph b of paragraph 1 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 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. 1. The maximum amount of all eligible investments made prior to June 1, 2002, for which tax credits may be claimed under this section shall be Thirty Million Dollars (\$30,000,000.00). 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 Thirty Million Dollars (\$30,000,000.00). 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 Thirty Million Dollars (\$30,000,000.00). 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.

2. The maximum amount of all eligible investments made on or after June 1, 2002, but not later than December 31, 2002, for which tax credits may be claimed under this section shall be Thirty Million Dollars (\$30,000,000.00). 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 Thirty Million Dollars (\$30,000,000.00). 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 Thirty Million Dollars (\$30,000,000.00). 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 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

H. 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. 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 January 1, 2001, and ending December 31, 2002. The qualified space transportation vehicle provider shall notify the Tax Commission not later than January 31, 2003, of the total investment amount for such period and the dates of each investment made. 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.

J. 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 or the Former Military Facility Development 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 I

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 Transportation 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.

K. 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 January 1, 2001, under the Oklahoma Quality Jobs Program Act or the Former Military Facility Development Act.

L. 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 or the Former Military Facility Development 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. 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 or the Former Military Facility Development Act may receive such incentive payments prior to January 1, 2003.

N. No qualified space transportation vehicle provider 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 the Former

Military Facility Development Act or which has received any incentive payment pursuant to the Oklahoma Quality Jobs Program Act or the Former Military Facility Development Act prior to the effective date of this act, may be certified 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.

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