SSTATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

COMMITTEE SUBSTITUTE
FOR
SENATE BILL 267 By: Capps

COMMITTEE SUBSTITUTE

An Act relating to revenue and taxation; amending 68 O.S. 2001, Section 2357.42, as amended by Section 1, Chapter 379, O.S.L. 2002 (68 O.S. Supp. 2002, Section 2357.42), which relates to income tax credits for qualified space transportation vehicle providers; modifying years for which certain tax credit allowed; specifying certain property the value of which may be included for purposes of determining certain qualification to receive tax credit; providing certain limitations; modifying date for certain notification; 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, as amended by Section 1, Chapter 379, O.S.L. 2002 (68 O.S. Supp. 2002, 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~~ January 1, 2009, 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 G of this section.

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

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, 2003~~ December 31, 2004, 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 this title 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). For purposes

of computing the amount of equity capitalization pursuant to the provisions of this division, the value of the following assets of the space transportation vehicle provider shall be included if such assets are the property of and are so listed on the balance sheet of the space transportation vehicle provider:

(a) the value of intellectual property, and

(b) the value of space products and technologies not derived from or directly dependent on business related to the proposed Oklahoma space transportation vehicle.

For purposes of this subparagraph, the value of property shall be included to the extent such value has been determined by a qualified intellectual property appraiser, in the case of intellectual property, or other qualified appraiser, in the case of property other than intellectual property, utilizing standard valuation methodologies accepted by the American Society of Appraisers. For purposes of computing the amount of equity capitalization, not more than Four Million Dollars ($4,000,000.00) shall be derived from intellectual property and not less than Five Million Dollars ($5,000,000.00) shall be derived from cash or similarly negotiable instruments. Assets used in the determination of the amount of equity capitalization shall only be included to the extent such assets are not otherwise obligated or encumbered, 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 or personal or real property which a local governmental entity has transferred to a state authority. If such property has been so transferred, the commitment required by this division may be satisfied if the state authority agrees in writing to make the property so transferred available for use by one or more qualified space transportation vehicle providers;

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. "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; and

4. "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. 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 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 such investor. Further, 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 as to the initial investor or investors 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. Any recapture under this subsection shall only apply as to that part of the tax credit as is associated with the amount of the investment which is subsequently refunded or returned or which is not utilized.

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. 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 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 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 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.

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 January 1, 2001, and ending ~~December 31, 2003~~ December 31, 2004. The qualified space transportation vehicle provider shall notify the Tax Commission not later than ~~January 31, 2003~~ January 31, 2005, of the total investment amount for such period. 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 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 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 this title 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 this title 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 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 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 January 1, 2001, under the Oklahoma Quality Jobs Program Act or the Former Military Facility Development 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 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.

N. Except as provided by subsection M 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.

O. 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 24, 2001, 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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