

ENROLLED SENATE
BILL NO. 440

By: Rabon of the Senate

and

Pope of the House

An Act relating to revenue and taxation; exempting certain transactions from sales tax; defining term; limiting exemption; prohibiting certain purchases for resale; amending 68 O.S. 2001, Section 2357.4, as amended by Section 14, Chapter 299, O.S.L. 2002 (68 O.S. Supp. 2002, Section 2357.4), which relates to income taxes; modifying carry forward period for certain income tax credit; amending Section 1, Chapter 265, O.S.L. 2002 (68 O.S. Supp. 2002, Section 2851.2), which relates to the Task Force on Valuation of Gas Gathering System Assets; extending date for completion of task force study; providing an effective date; 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 1357.9 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. There are exempt from the taxes imposed by Section 1351 et seq. of Title 68 of the Oklahoma Statutes service transactions among related entities.

B. For purposes of this section, "related entity" includes persons as defined by subsection (b) of Section 267 of the Internal Revenue Code.

C. An exemption authorized by this section does not apply to a service that would have been taxable under Section 1351 et seq. of Title 68 of the Oklahoma Statutes as it existed on July 1, 2003.

D. Services that are exempt under this section may not be purchased for resale by the providing company.

E. Tangible personal property that is transferred as an integral part of a service exempted under this section may not be purchased for resale by the providing company.

SECTION 2. AMENDATORY 68 O.S. 2001, Section 2357.4, as amended by Section 14, Chapter 299, O.S.L. 2002 (68 O.S. Supp. 2002, Section 2357.4), is amended to read as follows:

Section 2357.4 A. Except as otherwise provided in subsection F of Section ~~§ 3658~~ of this ~~act~~ title, for taxable years beginning after December 31, 1987, there shall be allowed a credit against the tax imposed by Section 2355 of this title for:

1. Investment in qualified depreciable property placed in service during those years for use in a manufacturing operation, as defined in Section 1352 of this title, which has received a manufacturer exemption permit pursuant to the provisions of Section 1359.2 of this title or a qualified aircraft maintenance or manufacturing facility as defined in paragraph 14 of Section 1357 of this title in this state; or

2. A net increase in the number of full-time-equivalent employees engaged in manufacturing, processing or aircraft maintenance in this state including employees engaged in support services.

B. Except as otherwise provided in subsection F of Section ~~§ 3658~~ of this ~~act~~ title, for taxable years beginning after December 31, 1998, there shall be allowed a credit against the tax imposed by Section 2355 of this title for:

1. Investment in qualified depreciable property with a total cost equal to or greater than Forty Million Dollars (\$40,000,000.00) within three (3) years from the date of initial qualifying expenditure and placed in service in this state during those years for use in the manufacture of products described by any Industry Number contained in Division D of Part I of the Standard Industrial Classification (SIC) Manual, latest revision; or

2. A net increase in the number of full-time-equivalent employees in this state engaged in the manufacture of any goods identified by any Industry Number contained in Division D of Part I of the Standard Industrial Classification (SIC) Manual, latest revision, if the total cost of qualified depreciable property placed in service by the business entity within the state equals or exceeds Forty Million Dollars (\$40,000,000.00) within three (3) years from the date of initial qualifying expenditure.

C. The business entity may claim the credit authorized by subsection B of this section for expenditures incurred or for a net increase in the number of full-time-equivalent employees after the business entity provides proof satisfactory to the Oklahoma Tax Commission that the conditions imposed pursuant to paragraph 1 or paragraph 2 of subsection B of this section have been satisfied.

D. If a business entity fails to expend the amount required by paragraph 1 or paragraph 2 of subsection B of this section within the time required, the business entity may not claim the credit authorized by subsection B of this section, but shall be allowed to claim a credit pursuant to subsection A of this section if the requirements of subsection A of this section are met with respect to the investment in qualified depreciable property or net increase in the number of full-time-equivalent employees.

E. The credit provided for in subsection A of this section, if based upon investment in qualified depreciable property, shall not be allowed unless the investment in qualified depreciable property is at least Fifty Thousand Dollars (\$50,000.00). The credit provided for in subsection A or B of this section shall not be allowed if the applicable investment is the direct cause of a decrease in the number of full-time-equivalent employees. Qualified property shall be limited to machinery, fixtures, equipment, buildings or substantial improvements thereto, placed in service in this state during the taxable year. The taxable years for which the credit may be allowed if based upon investment in qualified depreciable property shall be measured from the year in which the qualified property is placed in service. If the credit provided for in subsection A or B of this section is calculated on the basis of the cost of the qualified property, the credit shall be allowed in each of the four (4) subsequent years. If the qualified property on which a credit has previously been allowed is acquired from a related party, the date such property is placed in service by the transferor shall be considered to be the date such property is placed in service by the transferee, for purposes of determining the aggregate number of years for which credit may be allowed.

F. The credit provided for in subsection A or B of this section, if based upon an increase in the number of full-time-equivalent employees, shall be allowed in each of the four (4) subsequent years only if the level of new employees is maintained in the subsequent year. In calculating the credit by the number of new employees, only those employees whose paid wages or salary were at least Seven Thousand Dollars (\$7,000.00) during each year the credit is claimed shall be included in the calculation. Provided, that the first year a credit is claimed for a new employee, such employee may be included in the calculation notwithstanding paid wages of less than Seven Thousand Dollars (\$7,000.00) if the employee was hired in the last three quarters of the tax year, has wages or salary which will result in annual paid wages in excess of Seven Thousand Dollars (\$7,000.00) and the taxpayer submits an affidavit stating that the employee's position will be retained in the following tax year and will result in the payment of wages in excess of Seven Thousand Dollars (\$7,000.00). The number of new employees shall be determined by comparing the monthly average number of full-time employees subject to Oklahoma income tax withholding for the final quarter of the taxable year with the corresponding period of the prior taxable year, as substantiated by such reports as may be required by the Tax Commission.

G. The credit allowed by subsection A of this section shall be the greater amount of either:

1. One percent (1%) of the cost of the qualified property in the year the property is placed in service; or

2. Five Hundred Dollars (\$500.00) for each new employee. No credit shall be allowed in any taxable year for a net increase in the number of full-time-equivalent employees if such increase is a result of an investment in qualified depreciable property for which an income tax credit has been allowed as authorized by this section.

H. The credit allowed by subsection B of this section shall be the greater amount of either:

1. Two percent (2%) of the cost of the qualified property in the year the property is placed in service; or

2. One Thousand Dollars (\$1,000.00) for each new employee.

No credit shall be allowed in any taxable year for a net increase in the number of full-time-equivalent employees if such increase is a result of an investment in qualified depreciable property for which an income tax credit has been allowed as authorized by this section.

I. Except as provided by subsection G of Section ~~§~~ 3658 of this ~~act~~ title, any credits allowed but not used in any taxable year may be carried over in order ~~to~~ as follows:

1. To each of the four (4) years following the year of qualification; and ~~to~~

2. To the extent not used in those years in order to each of the fifteen (15) years following the initial five-year period.

To the extent not used in paragraphs 1 and 2 of this subsection, such credits from qualified depreciable property placed in service on or after January 1, 2000, may be utilized in any subsequent tax years after the initial twenty-year period.

SECTION 3. AMENDATORY Section 1, Chapter 265, O.S.L. 2002 (68 O.S. Supp. 2002, Section 2851.2), is amended to read as follows:

Section 2851.2 A. There is hereby created the "Task Force on Valuation of Gas Gathering System Assets".

B. The Task Force shall consist of six (6) members to be appointed as follows:

1. Three members shall be appointed by the Speaker of the Oklahoma House of Representatives from the membership of the House; and

2. Three members shall be appointed by the President Pro Tempore of the Oklahoma State Senate from the membership of the Senate.

C. The Speaker of the Oklahoma House of Representatives shall designate one of the Speaker's appointees as a cochair. The President Pro Tempore of the Oklahoma State Senate shall designate one of the Pro Tempore's appointees as a cochair. The Task Force shall conduct an organizational meeting not later than August 31, 2002.

D. The Task Force shall conduct a study of the valuation of gas gathering system assets for purposes of ad valorem taxation. The study shall include:

1. The valuation methods currently used for gas gathering systems;

2. The methods used to determine whether gas gathering system assets are subject to the jurisdiction of a county assessor or the State Board of Equalization for purposes of valuation and assessment;

3. Existing opinions of the courts of the State of Oklahoma governing the valuation and assessment of gas gathering system assets or such other materials, cases, opinions or determinations that may be relevant to the study; and

4. Other matters as may be pertinent to the study and recommendations of the Task Force as the Task Force deems relevant.

E. The Task Force shall not be subject to the Oklahoma Open Meeting Act or to the Oklahoma Open Records Act.

F. The Task Force shall be authorized to meet at such times as may be required in order to fulfill the duties imposed upon the Task Force by law. Members of the Task Force shall be reimbursed for their necessary travel expenses incurred in the performance of their duties in accordance with Section 456 of Title 74 of the Oklahoma Statutes.

G. Staff assistance for the Task Force shall be provided by the Oklahoma House of Representatives and the Oklahoma State Senate.

H. The Task Force shall complete its study not later than ~~December 31, 2003~~ December 31, 2005.

SECTION 4. This act shall become effective July 1, 2003.

SECTION 5. 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.

Passed the Senate the 28th day of May, 2003.

Presiding Officer of the Senate

Passed the House of Representatives the 29th day of May, 2003.

Presiding Officer of the House
of Representatives

