

EHB 1894

THE STATE SENATE
Tuesday, March 16, 2004

ENGROSSED

House Bill No. 1894

ENGROSSED HOUSE BILL NO. 1894 - By: BONNY of the House and CAPPS of the Senate.

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. 2003, Section 2357.42), which relates to income tax credits for qualified space transportation vehicle providers; modifying years for which certain tax credit allowed; modifying types of tax for which credit may be given; 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. 2003, 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 or 2370 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.

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

3 C. As used in this section:

4 1. "Eligible investment" means an investment made during a
5 period not earlier than January 1, 2001, and not later than December
6 31, 2003, in a qualified space transportation vehicle provider that:

7 a. is headquartered in this state or is ultimately
8 controlled by an entity headquartered in this state,

9 b. has been certified by the Oklahoma Tax Commission as
10 meeting the following minimum qualifications:

11 (1) is included within the definition of "basic
12 industry" as set forth in division (1) of
13 subparagraph a of paragraph 1 of subsection A of
14 Section 3603 of this title and has been
15 preapproved by the Oklahoma Department of
16 Commerce to receive incentive payments pursuant
17 to the Oklahoma Quality Jobs Program Act or the
18 Former Military Facility Development Act. The
19 Department shall establish a process for
20 preapproval of applicants for the Oklahoma
21 Quality Jobs Program Act or the Former Military
22 Facility Development Act for purposes of this
23 division. The qualified space transportation

1 vehicle provider shall agree to submit such
2 information as may be required under this section
3 and the Oklahoma Quality Jobs Program Act or the
4 Former Military Facility Development Act to allow
5 the Tax Commission to determine the amount of the
6 tax credit allowed pursuant to the provisions of
7 this section and the amount of incentive payments
8 allowed pursuant to the Oklahoma Quality Jobs
9 Program Act or the Former Military Facility
10 Development Act for purposes of subsection K of
11 this section,

- 12 (2) has equity capitalization of not less than Ten
13 Million Dollars (\$10,000,000.00), and
14 (3) has received a commitment by a local governmental
15 entity, whether by contract, letter agreement,
16 terms sheet, resolution, ordinance or indenture,
17 to provide funds, personal property or real
18 property in the aggregate amount of Fifteen
19 Million Dollars (\$15,000,000.00) or more which
20 will be utilized by one or more qualified space
21 transportation vehicle providers. For purposes
22 of this division, such property may include
23 personal or real property owned by a local

1 governmental entity which has been leased to a
2 state authority pursuant to a long-term lease or
3 personal or real property which a local
4 governmental entity has transferred to a state
5 authority. If such property has been so
6 transferred, the commitment required by this
7 division may be satisfied if the state authority
8 agrees in writing to make the property so
9 transferred available for use by one or more
10 qualified space transportation vehicle providers;

11 2. "Qualified space transportation vehicle provider" means any
12 commercial provider organized under the laws of this state as a
13 corporation or a limited liability company and engaged in designing,
14 developing, producing, or operating commercial space transportation
15 vehicles in this state;

16 3. "Space transportation vehicle" includes all types of
17 vehicles or orbital or suborbital spacecraft, whether now in
18 existence, developed in the future, or currently under design,
19 development, construction, reconstruction, or reconditioning,
20 constructed in this state and owned by a qualified space
21 transportation vehicle provider, for the purpose of operating in, or
22 transporting a payload to, from, or within, outer space, or in

1 suborbital trajectory, and includes any component of such vehicle or
2 spacecraft not specifically designed or adapted for a payload; and

3 4. "Subsequently refunded or returned", when used in reference
4 to an eligible investment, means an actual redemption by the
5 qualified space transportation vehicle provider of the securities or
6 other indicia of ownership in the qualified space transportation
7 vehicle provider received by the investor from the investor's
8 investment. The failure to allow the tax credits or the recapture
9 of the tax credits shall not affect the validity of the tax credits
10 in the hands of a transferee of the initial investor or subsequent
11 transferees. Provided, an investor to whom an eligible investment,
12 or portion thereof, is subsequently refunded or returned shall
13 reimburse the Tax Commission the amount of any credits claimed by a
14 transferee with respect to any such amount.

15 D. The tax credit provided for in this section shall not be
16 allowed or, if already claimed, shall be subject to recapture as to
17 the initial investor or investors with respect to any amount of an
18 eligible investment made which is subsequently refunded or returned
19 to such investor. Further, a tax credit shall not be allowed to an
20 investor making an eligible investment in a qualified space
21 transportation vehicle provider or shall be subject to recapture as
22 to the initial investor or investors if previously allowed if the
23 qualified space transportation vehicle provider in which the

1 investment was made fails to make use of such funds or property
2 within three (3) years of the date the tax credit was allowed. Any
3 recapture under this subsection shall only apply as to that part of
4 the tax credit as is associated with the amount of the investment
5 which is subsequently refunded or returned or which is not utilized.

6 E. The Tax Commission shall:

7 1. Certify, upon request of an authorized agent or
8 representative of a qualified space transportation vehicle provider,
9 that the qualified space transportation vehicle provider for which
10 the certification is sought meets the qualifications prescribed by
11 subparagraph b of paragraph 1 of subsection C of this section. The
12 certification shall be in writing and signed by an authorized
13 representative of the Tax Commission and, for purposes of
14 determining qualifications of a qualified space transportation
15 vehicle provider in which an investment may be eligible for the
16 credit authorized by this section, shall be binding upon the Tax
17 Commission; and

18 2. Issue a certificate to an investor that provides adequate
19 documentation of qualification for the credit authorized by this
20 section even if the credit may not be claimed until after the date
21 upon which the certificate is requested. Upon issuance, the
22 certificate shall be evidence that an investor or a transferee of
23 the original tax credit claimant submitting the certificate, or a

1 certified copy thereof, with the relevant tax return or other form,
2 has the legal right to exercise the credit in order to reduce the
3 relevant tax liability for the period authorized by this section.

4 F. The maximum amount of all eligible investments for which tax
5 credits may be claimed under this section shall be Thirty Million
6 Dollars (\$30,000,000.00). If more than one qualified space
7 transportation vehicle provider has been certified by the Tax
8 Commission pursuant to the provisions of subsection E of this
9 section, the investors in the first such approved qualified space
10 transportation vehicle provider shall be entitled to a credit based
11 on their investment of the lesser of their eligible investment or
12 Thirty Million Dollars (\$30,000,000.00). The investors in the
13 second such approved qualified space transportation vehicle provider
14 shall then be entitled to a credit based on their investment of the
15 lesser of their eligible investment or the difference between the
16 total eligible investments in previously approved qualified space
17 transportation vehicle providers and Thirty Million Dollars
18 (\$30,000,000.00). This same procedure will apply for all
19 subsequently approved qualified space transportation vehicle
20 providers. If the amount of eligible investments exceeds the amount
21 upon which the tax credit may be claimed as provided herein,
22 investors shall be allowed a share of the amount of the available
23 tax credit in order of the dates of receipt of certification

1 therefor by the Tax Commission pursuant to the provisions of
2 paragraph 1 of subsection E of this section.

3 G. The amount of the tax credit allowed pursuant to the
4 provisions of subsection A of this section shall be deemed fully
5 earned as of the date of the investment and shall be fully
6 redeemable as follows:

7	Period for Which	
8	Tax Liability Determined	Credit Allowed
9	Tax year subsequent to year of	
10	eligible investment	10.6% of eligible
11		investment
12	Second tax year subsequent to year	
13	of eligible investment	11.236% of eligible
14		investment
15	Third tax year subsequent to year	
16	of eligible investment	11.910% of eligible
17		investment
18	Fourth tax year subsequent to year	
19	of eligible investment	12.624% of eligible
20		investment
21	Fifth tax year subsequent to year	
22	of eligible investment	13.381% of eligible
23		investment

1 H. The amount of a tax credit allowed pursuant to the
2 provisions of this section not used in payment of taxes due in the
3 year in which such credit is allowed pursuant to subsection G of
4 this section may be used as a credit against subsequent tax
5 liability of the investor or a subsequent transferee for a period
6 not to exceed three (3) years from the year in which such credit is
7 originally allowed.

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

11 J. A qualified space transportation vehicle provider in which
12 an eligible investment qualifies for a credit authorized by this
13 section shall maintain a record of investment made in the qualified
14 space transportation vehicle provider for the period beginning
15 January 1, 2001, and ending December 31, 2003. The qualified space
16 transportation vehicle provider shall notify the Tax Commission not
17 later than ~~January 31, 2003~~ January 31, 2004, of the total
18 investment amount for such period. Any such qualified space
19 transportation vehicle provider which refunds or returns any amount
20 of an eligible investment to the investor shall notify the Tax
21 Commission in writing of the amount and recipient of such refunds or
22 returns. The Tax Commission shall compute the maximum amount of
23 credits available pursuant to this section based upon notification

1 of the investment amount transmitted to the Tax Commission by the
2 qualified space transportation vehicle provider.

3 K. A qualified space transportation vehicle provider in which
4 eligible investments qualify for the tax credit authorized by this
5 section shall not receive incentive payments pursuant to the
6 Oklahoma Quality Jobs Program Act or the Former Military Facility
7 Development Act until the total of such incentive payments the
8 qualified space transportation vehicle provider would otherwise
9 receive exceeds the total amount of the credit authorized by this
10 section as computed by the Tax Commission pursuant to subsection J
11 of this section. The amount of incentive payments for any year
12 which would otherwise be paid to the qualified space transportation
13 vehicle provider shall be distributed as follows:

14 1. If the amount of such incentive payments equals or exceeds
15 the amount of the tax credit for the year, the amount of such
16 payments which is equal to the amount of the tax credit shall be
17 apportioned as if collected from the tax imposed by Section 2355 or
18 2370 of this title or Section 624 or 628 of Title 36 of the Oklahoma
19 Statutes according to the tax against which the credit was claimed.
20 The amount of such payments which is in excess of the amount of the
21 tax credit shall be retained by the Tax Commission to be paid as
22 provided for in this paragraph for subsequent years for which the

1 tax credit is allowed to the qualified space transportation vehicle
2 provider;

3 2. If the amount of such incentive payments and any amount
4 retained by the Tax Commission pursuant to the provisions of
5 paragraph 1 of this subsection is less than the amount of the tax
6 credit for the year, notwithstanding the provisions of Section 1727
7 of Title 69 of the Oklahoma Statutes, the Tax Commission shall
8 withhold a portion of the taxes levied and collected pursuant to the
9 provisions of paragraph 1 of subsection A of Section 500.4 of this
10 title which would otherwise be paid to the Department of
11 Transportation by the Oklahoma Transportation Authority pursuant to
12 the provisions of paragraph (2) of subsection (d) of Section 1730 of
13 Title 69 of the Oklahoma Statutes equal to the amount of the
14 deficit.

15 The Tax Commission shall apportion all funds collected pursuant
16 to the provisions of this paragraph as if collected from the tax
17 imposed by Section 2355 or 2370 of this title or Section 624 or 628
18 of Title 36 of the Oklahoma Statutes according to the tax against
19 which the credit was claimed; and

20 3. If any amount is withheld by or paid to the Tax Commission
21 pursuant to the provisions of paragraph 2 of this subsection, the
22 amount of incentive payments to be subsequently paid to the
23 qualified space transportation vehicle provider shall be apportioned

1 by the Tax Commission to the Department of Transportation until such
2 time as all amounts paid pursuant to the provisions of paragraph 2
3 of this subsection are repaid.

4 L. A qualified space transportation vehicle provider in which
5 investments qualify for the credit allowed by this section shall not
6 be entitled to payment of any incentive payments accrued prior to
7 January 1, 2001, under the Oklahoma Quality Jobs Program Act or the
8 Former Military Facility Development Act.

9 M. Notwithstanding the provisions of this section, a qualified
10 space transportation vehicle provider may, prior to the issuance of
11 a tax credit with respect to the qualified space transportation
12 vehicle provider pursuant to the provisions of this section, elect
13 to receive incentive payments pursuant to the provisions of the
14 Oklahoma Quality Jobs Program Act or the Former Military Facility
15 Development Act in lieu of allowing the tax credit provided for
16 herein, in which case it shall so notify the Tax Commission in
17 writing and the provisions of this section shall not be applicable.

18 N. Except as provided by subsection M of this section, no
19 qualified space transportation vehicle provider which would
20 otherwise qualify for incentive payments pursuant to the provisions
21 of the Oklahoma Quality Jobs Program Act or the Former Military
22 Facility Development Act may receive such incentive payments prior
23 to January 1, 2003.

1 O. No qualified space transportation vehicle provider which has
2 made application to the Oklahoma Department of Commerce or which has
3 executed any agreement with the Oklahoma Department of Commerce with
4 respect to the receipt of incentive payments pursuant to the
5 provisions of the Oklahoma Quality Jobs Program Act or the Former
6 Military Facility Development Act or which has received any
7 incentive payment pursuant to the Oklahoma Quality Jobs Program Act
8 or the Former Military Facility Development Act prior to ~~the~~
9 ~~effective date of this act~~ May 24, 2001, may be certified for
10 purposes of determining eligibility for the credit authorized by
11 this section.

12 SECTION 2. It being immediately necessary for the preservation
13 of the public peace, health and safety, an emergency is hereby
14 declared to exist, by reason whereof this act shall take effect and
15 be in full force from and after its passage and approval.

16 COMMITTEE REPORT BY: COMMITTEE ON AEROSPACE & TECHNOLOGY, dated
17 3-15-04 - DO PASS.