

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

HOUSE BILL 1534

By: Deutschendorf

AS INTRODUCED

An Act relating to revenue and taxation; authorizing income tax credits; authorizing tax credits for certain in lieu tax; authorizing insurance premium tax credits; providing for credits issued to qualified housing component manufacturing facility; providing for transferability of credits; limiting total amount of credits; defining terms; prescribing procedures for use of credits; requiring certain information to be provided to Oklahoma Tax Commission; imposing liability upon certain entity under certain circumstances; restricting encumbrance of assets purchased with proceeds from sale of credits; providing for certain treatment of obligation based upon insolvency or actions related to protection from creditors; requiring deposit of certain net profits by qualified initial recipient or certain reinvestment activity; imposing restriction upon discount of credits; providing limitation upon time period for use of credit; imposing duties upon Oklahoma Tax Commission; providing for certification process; 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 2357.46 of Title 68, unless there is created a duplication in numbering, reads as follows:

A. For taxable years beginning after December 31, 2004, there shall be allowed a credit against the tax imposed pursuant to Section 2355 or Section 2370 of Title 68 of the Oklahoma Statutes or against the tax imposed pursuant to Section 624 or 628 of Title 36 of the Oklahoma Statutes for tax credits originally issued to a qualified housing component manufacturing facility located in Oklahoma. 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.

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

C. The total amount of credits authorized to be claimed pursuant to this section shall not exceed Three Million One Hundred Thousand Dollars (\$3,100,000.00). Credits in the amount of Three Million One Hundred Thousand Dollars (\$3,100,000.00) shall be issued directly to a qualified housing component manufacturing facility upon certification by the Oklahoma Tax Commission that the applicant for such credits is a qualified initial recipient.

D. As used in this section:

1. "Qualified housing component manufacturing facility" means real property and related personal property used exclusively for the manufacture of components or systems to be incorporated into the structure of single-family residential dwellings, including, but not limited to, wooden house frame components or sections, plumbing assemblies, electrical wiring systems, roof assemblies or subassemblies or such other assemblies, components or systems that are designed to be mass-produced by the facility to achieve cost efficiencies for builders of single-family residences. As used in this paragraph, qualified housing component manufacturing facility does not mean a facility engaged in production of materials, assemblies or subassemblies for use in the construction of multifamily housing units or a facility engaged in the production of manufactured homes as defined by 42 U.S.C., Section 5401 et seq., and rules promulgated thereto; and

2. "Qualified initial recipient" means a person, firm, partnership, corporation, limited liability company or other legal entity organized pursuant to the laws of the State of Oklahoma that has as its principal business purpose and activity the manufacture of components, assemblies, structures or systems for the

incorporation in the final structure consisting of a single-family residential dwelling and which, after the sale of the credits authorized by this section, will own real property in the state to be used for the manufacture of such components, assemblies, structures or systems.

E. For purposes of this section, the qualified housing component manufacturing facility may receive the tax credits authorized by subsection A of this section prior to the date as of which actual manufacturing activity at a qualified facility begins. In order for the Oklahoma Tax Commission to issue credits to a qualified initial recipient, the applicant shall be required to demonstrate that it is a legally recognized business entity authorized to do business in the state and that its principal business purpose meets the requirements of paragraph 1 of subsection D of this section.

F. In order to be eligible for receipt of any tax credits authorized by this section, the entity making application shall present to the Oklahoma Tax Commission, in the form of an affidavit executed by a principal representing the applicant, whether a member of the board of directors or officer of a corporation, or a manager or member of a limited liability company, stating that the person executing the affidavit is either a member of the board of directors or an officer of the applicant or both, in the case of a corporation, or a manager or member or both, in the case of a limited liability company, and that the affiant is an individual who has at least five (5) years of experience in the business of producing, within the State of Oklahoma, wall panels, plumbing assemblies and electrical wiring components, or any such combination of subassembly components that will be manufactured by the applicant. The presentation of a duly executed affidavit pursuant to this subsection shall be sufficient documentation of the requirements for the principal acting on behalf of the applicant for

receipt of the tax credits and no further documentation related to the factual recitations of the affidavit shall be required.

G. If the entity to which the credits authorized by this section does not complete a housing component manufacturing facility within three (3) years of the date as of which the credits are issued, the entity shall become liable to the Oklahoma Tax Commission for the full amount of credits actually issued and interest computed on the principal amount of credits so issued as if the amount of tax credits issued were a final assessment of tax pursuant to Section 221 of Title 68 of the Oklahoma Statutes and interest shall accrue on such principal amount as provided by Section 217 of Title 68 of the Oklahoma Statutes until the liability is paid.

H. The initial recipient of the tax credits authorized by this section shall not voluntarily encumber any asset purchased with proceeds from the sale of such tax credits.

I. If the initial recipient of the tax credits authorized by this section becomes insolvent or files for protection from creditors under either Chapter 7 or Chapter 11 of the United States Bankruptcy Code, the total amount of tax credits sold, regardless of the proceeds derived from their sale, shall be treated as an obligation due and owing to the Oklahoma Tax Commission as a state tax liability for purposes of determining the priority of the claim pursuant to Section 507 of Title 11 of the United States Code.

J. Beginning no later than the end of the fourth year following the issuance of the tax credits authorized by this section, twenty percent (20%) of the net profits of the qualified initial recipient for each year shall be deposited by the initial recipient into the General Revenue Fund of the State of Oklahoma until an amount equal to the tax credits has been deposited or that twenty percent (20%) of the net profits shall be reinvested into new plant and equipment

until an amount equal to the tax credits has been reinvested or a combination of both.

K. The credits authorized by this section shall not be sold for less than eighty percent (80%) of their face or par value.

L. The credits authorized by this section shall not be claimed against any income tax, bank privilege tax or insurance premium tax liability prior to July 1, 2005.

M. The Oklahoma Tax Commission shall:

N. Certify, upon request of an authorized agent or representative of a qualified initial recipient that the qualified initial recipient is authorized to receive the tax credits and transfer such credits to a subsequent purchaser. The certification shall be in writing and signed by an authorized representative of the Tax Commission and, for purposes of determining qualifications of an establishment which may be eligible for the credit authorized by this section, shall be binding upon the Tax Commission; and

2. Issue a certificate to tax credit transferees 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 a transferee of the qualified initial recipient 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.

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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