

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

HOUSE BILL 2763

By: Roggow

AS INTRODUCED

An Act relating to revenue and taxation; amending 68 O.S. 2001, Section 2357.25, as amended by Section 1, Chapter 299, O.S.L. 2005 (68 O.S. Supp. 2005, Section 2357.25), which relates to tax credits for certain agricultural processing activity; modifying provisions related to direct investment qualifying for certain tax credits; providing certain requirements inapplicable to certain tax credits; providing restriction with respect to certain incentive inapplicable to certain tax credits; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 68 O.S. 2001, Section 2357.25, as amended by Section 1, Chapter 299, O.S.L. 2005 (68 O.S. Supp. 2005, Section 2357.25), is amended to read as follows:

Section 2357.25 A. There shall be allowed a credit against the tax imposed by Section 2355 of this title for ~~direct~~:

1. Direct investments by Oklahoma agricultural producers in Oklahoma producer-owned agricultural processing cooperatives, Oklahoma producer-owned agricultural processing ventures, or Oklahoma producer-owned agricultural processing marketing associations; or

2. Direct investments by Oklahoma-owned and -based corporations or partnerships created and designed to develop and advance the production, processing, handling and marketing of agricultural commodities grown, made or manufactured in Oklahoma; or

3. Direct investments by a person, partnership, corporation, limited liability company or other legally recognized entity which

is not itself an Oklahoma agricultural producer as defined by paragraph 5 of subsection J of this section in Oklahoma producer-owned agricultural processing cooperatives, ventures, or marketing associations.

B. For calendar years 1997 and 1998, the amount of the credit shall be thirty percent (30%) of the amount of the investment by the Oklahoma agricultural producer in Oklahoma producer-owned agricultural processing cooperatives, ventures, or marketing associations.

~~B.~~ C. 1. For calendar year 2006, and all subsequent years, the credit percentage for taxpayers making investment pursuant to paragraph 1 or 2 of subsection A of this section, not to exceed thirty percent (30%), shall be adjusted annually so that the total estimate of credits does not exceed Two Million Dollars (\$2,000,000.00) annually. The formula to be used for the percentage adjustment shall be thirty percent (30%) times Two Million Dollars (\$2,000,000.00) divided by the credits claimed in the preceding year. In no event shall the credit be claimed more than once by a taxpayer each taxable year.

2. For taxable years beginning after December 31, 2006, the amount of the credit for direct investment pursuant to paragraph 3 of subsection A of this section shall be twenty percent (20%) of the amount of the investment. There shall be no annual or fiscal year limitation upon the amount of tax credits authorized based upon direct investment pursuant to paragraph 3 of subsection A of this section.

~~C.~~ D. In the event the total tax credits authorized by paragraphs 1 and 2 of subsection A of this section exceed Two Million Dollars (\$2,000,000.00) in any calendar year, the Oklahoma Tax Commission shall permit any excess over Two Million Dollars (\$2,000,000.00) but shall factor such excess into the percentage adjustment formula for subsequent years.

~~D.~~ E. The credits authorized by ~~this act~~ Section 1, Chapter 299, O.S.L. 2005 may only be claimed for taxable years beginning after December 31, 2006, and ending before January 1, 2010. The provisions of this subsection shall not be applicable to any credits earned, but not utilized, prior to the effective date of this act or to any credits earned as a result of direct investment pursuant to paragraph 3 of subsection A of this section.

~~E.~~ F. If the credit allowed pursuant to paragraph 1, 2 or 3 of subsection A of this section exceeds the amount of state income taxes due or if there are no state income taxes due on the income of the taxpayer, the amount of credit allowed but not used in any taxable year may be carried forward as a credit against subsequent income tax liability for a period not exceeding six (6) years following the year in which the investment was originally made.

~~F.~~ G. The Oklahoma Tax Commission shall have the authority to prescribe forms for purposes of claiming the credit authorized by this section. The Oklahoma Tax Commission shall be authorized to conduct an investigation of the relevant facts as may be required in order to verify the eligibility of a claimant to receive a credit for any applicable income tax year.

~~G.~~ H. 1. For any taxable year during which a taxpayer sells or otherwise disposes of the ownership interest for which a tax credit has previously been allowed to the taxpayer or for which a tax credit will be allowed to the taxpayer for the year in which the sale or other disposition of the ownership interest is made, the taxpayer shall be required to reduce the cost of the ownership interest in the Oklahoma producer-owned agricultural processing cooperative, venture, or marketing association, as reported upon the applicable income tax return, by the amount of the tax credit which has previously been granted or for which the taxpayer is claiming credit if the credit is allowable for the year during which the sale or other disposition is made.

2. If a taxpayer sells or otherwise disposes of an ownership interest in the Oklahoma producer-owned agricultural processing cooperative, venture, or marketing association for which the tax credit authorized by this section may be taken in a taxable year following the year in which the ownership interest in the Oklahoma producer-owned agricultural processing cooperative, venture, or marketing association is sold or otherwise disposed of, the credit authorized by this section shall be reduced to account for the prior sale or other disposition.

~~H.~~ I. The tax credit authorized by paragraph 1 or 2 of subsection A of this section shall not be available or taken for any calendar year during which the claimant of the credit received any incentive payments pursuant to the Oklahoma Quality Jobs Program Act or the Saving Quality Jobs Act. The restriction provided by this subsection shall not be applicable to any claimant eligible for tax credits as a result of direct investment made pursuant to paragraph 3 of subsection A of this section.

~~I.~~ J. As used in this section:

1. "Direct investment" means the payment of money in an Oklahoma producer-owned agricultural processing cooperative, venture, or marketing association or the transfer of any form of economic value, whether tangible or intangible, other than money;

2. "Oklahoma producer-owned agricultural processing cooperative" means a legal entity in the nature of a partnership or business undertaking agricultural transactions or agricultural commercial enterprises for mutual profit which are owned and controlled by Oklahoma agricultural producers. An Oklahoma producer-owned agricultural processing cooperative requires a community of interest in the performance of the undertaking, transaction or enterprise, a right to direct and govern the policy in connection therewith and the duty, which may be altered by agreement, to share both in profit and losses. The term does not

include a cooperative that provides only, and nothing more than, storage, cleaning, or transportation of agricultural commodities;

3. "Oklahoma producer-owned agricultural processing venture" means a legal entity in the nature of a corporation or company organized to invest in or operate an agricultural commodity processing facility operated primarily for the processing or production of marketable products from agricultural commodities. The term shall include a dairy operation that requires a depreciable investment of at least Two Hundred Fifty Thousand Dollars (\$250,000.00) and which produces milk from dairy cows. The term does not include a venture that provides only, and nothing more than, storage, cleaning, or transportation of agricultural commodities;

4. "Oklahoma producer-owned agricultural processing marketing association" means:

- a. a legal entity owned by Oklahoma producers of agricultural commodities and organized to jointly market agricultural commodities and/or natural-resource-based recreational activities, facilitate the marketing process and to promote and stimulate the processing, sales, and marketing of agricultural commodities, or
- b. a legal entity owned by Oklahoma producers of agricultural commodities and organized for collective marketing and improvement of land for natural-resource-based recreational activity;

The term does not include a marketing association that provides only, and nothing more than, storage, cleaning, or transportation of agricultural commodities;

5. "Oklahoma agricultural producer" means any person who produces agricultural commodities in this state;

6. "Oklahoma-based corporation or partnership" means an entity created pursuant to the Oklahoma General Corporation Act or other laws of the state authorizing either a corporate entity or an entity with limited liability or any form of partnership, whether general, limited or other authorized partnership form having either its principal place of business within the state or substantial assets located within the state. For the purpose of this section, the definition contained in this paragraph shall not include an Oklahoma-based corporation or partnership that engages only in and nothing more than the storage, cleaning, and transportation or production of its commodity;

7. "Agricultural commodities" means a farm or ranch product, including but not limited to, wheat, corn, soybeans, cotton, timber, cattle, hogs, sheep, horses, poultry, animals of the families bovidae, cervidae and antilocapridae or birds of the ratite group produced in farming or ranching operations or a product of such crop or livestock in its unmanufactured state such as ginned cotton, wool-dip, maple syrup, milk and eggs, or any other commodity listed under any Industry Group Number under Major Group 20 of Division D of the Standard Industrial Classification (SIC) Manual; and

8. "Dairy operation" means and includes equipment and facilities to store and prepare feed, dairy cows, milking parlors, bulk cooling tanks, buildings, and all such depreciable investment commonly utilized in the dairy industry.

~~J.~~ K. For purposes of this section, an agricultural commodity shall be deemed to be produced within this state if it is substantially produced, by any person, partnership, company, association or corporation:

1. Authorized to do and doing business under the laws of this state;

2. Paying all taxes duly assessed; and

3. Domiciled within this state by having a location of production within this state.

SECTION 2. This act shall become effective January 1, 2007.

SECTION 3. 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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