SB 1088

THE STATE SENATE

Monday, February 23, 2009

Senate Bill No. 1088

As Amended

SENATE BILL NO. 1088 - By: Newberry of the Senate and Jordan of the House.

[revenue and taxation - certain income tax credits transferrable - establishing procedures - effective date]

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

SECTION 1. AMENDATORY 68 O.S. 2001, Section 2357.4, as last amended by Section 29, Chapter 281, O.S.L. 2006 (68 O.S. Supp. 2008, 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 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 a qualified web search portal as defined paragraph 35 of Section 1357 of this title; 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 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 title, any credits allowed but not used in any taxable year may be carried over in order as follows:

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

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.

J. **Credits available to be claimed before the effective date of this act** pursuant to subsection B of this section to a business entity engaged in the production of paper consumer products and located in a county of this state having a population of more than five hundred thousand (500,000) according to the latest Federal Decennial Census, but not used, shall be freely transferable **before January 1, 2014**, by written agreement to subsequent transferees at any time following the year of qualification; provided that the amount of any credit transferred pursuant to this subsection shall only be granted to the subsequent transferee at an amount equal to ninety percent (90%) of the original face amount of the credit, and the amount of any credit transferred in a tax year shall not exceed **twenty percent (20%) of the total credits available to be claimed before the effective date of this act**. The transferor must invest, within sixty (60) months of the transfer of the credits, an amount equal to the net proceeds received in connection with the transfer, in capital expenditures for an Oklahoma business entity eligible pursuant to this subsection. The transferor shall be required to certify annually such reinvestment in accordance with procedures developed by the Tax Commission. An eligible transferee shall be any taxpayer subject to the tax imposed by Section 1803 or Section 2355 of this title or Section 624 or 628 of Title 36 of the Oklahoma Statutes. The transferor and the subsequent transferee shall jointly file a copy of the written credit transfer agreement with the Tax Commission within thirty (30) days of the transfer. The written agreement shall contain the name and address and taxpayer identification number of the parties to the transfer, the original face amount of credit being transferred, the new reduced amount of the transferred credit which is the amount of credit that the transferee is allowed to utilize, and the year the credit was originally allowed to the transferor. The Tax Commission may promulgate rules to permit verification of the validity and timeliness of a tax credit claimed upon a tax return pursuant to this subsection but shall not promulgate any rules which unduly restrict or hinder the transfers of such tax credit. The transferred credits, upon election of the transferee taxpayer, shall be treated and may be claimed as a payment of tax, a prepayment of tax or a payment of estimated tax for purposes of Section 1803 or 2355 of this title or Section 624 or 628 of Title 36 of the Oklahoma Statutes.

K. As used in this subsection, "recapture event" means that with respect to the credits which may be transferred pursuant to subsection J of this section:

1. The business entity eligible pursuant to subsection J of this section fails to invest the net proceeds received in connection with the transfer of the credits within sixty (60) months of the transfer of such credits in capital expenditures for an Oklahoma business entity eligible pursuant to subsection J of this section; or

2. The Tax Commission finds that the investment does not meet the requirements of subsection J of this section.

L. If a recapture event occurs with respect to a transferrable credit authorized pursuant to subsection J of this section, the tax imposed pursuant to the applicable provisions of Title 68 of the Oklahoma Statutes shall be increased to one hundred percent (100%) of the original face amount of the credit.

M. For purposes of this section, the recapture amount shall be equal to the sum of:

1. The aggregate decrease in the credits previously allowed to the taxpayer pursuant to this section for all prior taxable periods which would have resulted if no credit had been authorized; plus

2. Interest at the rate prescribed by Section 217 of this title on the amount determined pursuant to paragraph 1 of this subsection for each prior taxable period for the period beginning on the due date for filing the applicable report or return for the prior taxable period; and

3. If the transferor invested a portion but not all of the net proceeds in capital expenditures as required by subsection J of this section, the Tax Commission shall prorate the recapture amount accordingly.

N. The tax for the taxable period shall be increased pursuant to this section only with respect to credits which were used to

<u>reduce tax liability. In the case of credits not used to reduce tax liability, the carryforwards allowed shall be adjusted accordingly.</u>

<u>O. For any transaction that is audited by the Tax Commission after such credits have been allowed, but which is subsequently determined to constitute a recapture event, the Tax Commission shall be required to disallow any and all credits claimed in violation of the requirements of subsection J of this section for a period of ten (10) years after the date as of which any applicable tax report or return utilizing such credits is filed.</u>

<u>P. The provisions of subsection E of this section shall supersede any other provision of the Uniform Tax Procedure Code or any other state tax law that would prohibit the disallowance of such credits based upon an otherwise applicable statute of limitations.</u>

SECTION 2. This act shall become effective November 1, 2009.

COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 2-17-09 - DO PASS, As Amended and Coauthored.