

1 STATE OF OKLAHOMA

2 2nd Session of the 54th Legislature (2014)

3 SENATE BILL 1288

By: Mazzei

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5  
6 AS INTRODUCED

7 An Act relating to revenue and taxation; amending 68  
8 O.S. 2011, Section 2357.104, which relates to income  
9 tax credits for certain railroad reconstruction or  
10 replacement expenditures; limiting time period during  
11 which certain credits are allowed; limiting  
12 transferability of certain credits to specified time  
13 period; authorizing refund of credits under specified  
14 circumstances; providing for amount of refund;  
15 specifying entities to whom credit may be refunded  
16 and procedures relating thereto; exempting refund  
17 amounts from income tax; defining term; and providing  
18 an effective date.

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

20 SECTION 1. AMENDATORY 68 O.S. 2011, Section 2357.104, is  
21 amended to read as follows:

22 Section 2357.104. A. Except as otherwise provided by  
23 subsection G of this section, for taxable years beginning after  
24 December 31, 2005, and ending before January 1, 2022, there shall be  
allowed a credit against the tax imposed by Section 2355 of this  
title equal to fifty percent (50%) of an eligible taxpayer's  
qualified railroad reconstruction or replacement expenditures.

1 B. 1. Except as provided in paragraph 2 of this subsection,  
2 the amount of the credit shall be limited to the product of Five  
3 Hundred Dollars (\$500.00) for tax year 2007 and Two Thousand Dollars  
4 (\$2,000.00) for tax year 2008 and subsequent tax years and the  
5 number of miles of railroad track owned or leased within this state  
6 by the eligible taxpayer as of the close of the taxable year.

7 2. In tax year 2009 and subsequent tax years, a taxpayer may  
8 elect to increase the limit provided in paragraph 1 of this  
9 subsection to an amount equal to three times the limit specified in  
10 paragraph 1 of this subsection for qualified expenditures made in  
11 the tax year, provided the taxpayer may only claim one third (1/3)  
12 of the credit in any one taxable period.

13 C. ~~The~~ 1. The credit allowed pursuant to subsection A of this  
14 section which is earned before January 1, 2015, but not used shall  
15 be freely transferable, by written agreement, to subsequent  
16 transferees at any time during the five (5) years following the year  
17 of qualification. An eligible transferee shall be any taxpayer  
18 subject to the tax imposed by Section 2355 of this title. The  
19 person originally allowed the credit and the subsequent transferee  
20 shall jointly file a copy of the written credit transfer agreement  
21 with the Oklahoma Tax Commission within thirty (30) days of the  
22 transfer. The written agreement shall contain the name, address and  
23 taxpayer identification number of the parties to the transfer, the  
24 amount of credit being transferred, the year the credit was

1 originally allowed to the transferring person and the tax year or  
2 years for which the credit may be claimed. The Tax Commission shall  
3 promulgate rules to permit verification of the timeliness of a tax  
4 credit claimed upon a tax return pursuant to this subsection but  
5 shall not promulgate any rules which unduly restrict or hinder the  
6 transfers of such tax credit. The Department of Transportation  
7 shall promulgate rules to permit verification of the eligibility of  
8 an eligible taxpayer's expenditures for the purpose of claiming the  
9 credit. The rules shall provide for the approval of qualified  
10 railroad reconstruction or replacement expenditures prior to  
11 commencement of a project and provide a certificate of verification  
12 upon completion of a project that uses qualified railroad  
13 reconstruction or replacement expenditures. The certificate of  
14 verification shall satisfy all requirements of the Tax Commission  
15 pertaining to the eligibility of the person claiming the credit.

16 2. For credits generated, but not used, on or after January 1,  
17 2015, the Tax Commission shall refund, at the taxpayer's election,  
18 directly to the taxpayer eighty-five percent (85%) of the face  
19 amount of such credits. The direct refund of the credits pursuant  
20 to this paragraph shall be available to all taxpayers, including,  
21 without limitation, pass-through entities and taxpayers subject to  
22 Section 2355 of this title. The amount of any direct refund of  
23 credits actually received at the eighty-five percent (85%) level by  
24 the taxpayer pursuant to this paragraph shall not be subject to the

1 tax imposed by Section 2355 of this title. If the pass-through  
2 entity does not file a claim for a direct refund, the pass-through  
3 entity shall allocate the credit to one or more of the shareholders,  
4 partners or members of the pass-through entity; provided, the total  
5 of all credits refunded or allocated shall not exceed the amount of  
6 the credit or refund to which the pass-through entity is entitled.  
7 For the purposes of this paragraph, "pass-through entity" means a  
8 corporation that for the applicable tax year is treated as an S  
9 corporation under the Internal Revenue Code of 1986, as amended,  
10 general partnership, limited partnership, limited liability  
11 partnership, trust or limited liability company that for the  
12 applicable tax year is not taxed as a corporation for federal income  
13 tax purposes.

14 D. Any credits allowed pursuant to the provisions of subsection  
15 A of this section but not used in any tax year may be carried over  
16 in order to each of the five (5) years following the year of  
17 qualification.

18 E. A taxpayer who elects to increase the limitation on the  
19 credit under paragraph 2 of subsection B of this section shall not  
20 be granted additional credits under subsection A of this section  
21 during the period of such election.

22 F. As used in this section:  
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1        1. "Class II and Class III railroad" means a railroad that is  
2 classified by the United States Surface Transportation Board as a  
3 Class II or Class III railroad;

4        2. "Eligible taxpayer" means any Class II or Class III  
5 railroad; and

6        3. "Qualified railroad reconstruction or replacement  
7 expenditures" means expenditures for:

8            a. reconstruction or replacement of railroad  
9                infrastructure including track, roadbed, bridges,  
10                industrial leads and track-related structures owned or  
11                leased by a Class II or Class III railroad as of  
12                January 1, 2006, or

13            b. new construction of industrial leads, switches, spurs  
14                and sidings and extensions of existing sidings by a  
15                Class II or Class III railroad.

16        G. No credit otherwise authorized by the provisions of this  
17 section may be claimed for any event, transaction, investment,  
18 expenditure or other act occurring on or after July 1, 2010, for  
19 which the credit would otherwise be allowable. The provisions of  
20 this subsection shall cease to be operative on July 1, 2012.  
21 Beginning July 1, 2012, the credit authorized by this section may be  
22 claimed for any event, transaction, investment, expenditure or other  
23 act occurring on or after July 1, 2012, according to the provisions  
24 of this section.

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SECTION 2. This act shall become effective November 1, 2014.

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