

1 STATE OF OKLAHOMA

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

3 SENATE BILL 1290

By: Mazzei

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6 AS INTRODUCED

7 An Act relating to revenue and taxation; amending 68
8 O.S. 2011, Section 2357.41, which relates to tax
9 credits for certain qualified rehabilitation
10 expenditures; limiting time period during which
11 certain credits are allowed; limiting transferability
12 of certain credits to specified time period;
13 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 2357.41, is
21 amended to read as follows:

22 Section 2357.41. A. Except as otherwise provided by subsection
23 I of this section, for tax years beginning after December 31, 2000,
24 and ending before January 1, 2022, there shall be allowed a credit
against the tax imposed by Sections 2355 and 2370 of this title or
that portion of the tax imposed by Section 624 or 628 of Title 36 of
the Oklahoma Statutes that would otherwise have been apportioned to
the General Revenue Fund for qualified rehabilitation expenditures

1 incurred in connection with any certified historic hotel or historic
2 newspaper plant building located in an increment or incentive
3 district created pursuant to the Local Development Act or for
4 qualified rehabilitation expenditures incurred after January 1,
5 2006, in connection with any certified historic structure.

6 B. The amount of the credit shall be one hundred percent (100%)
7 of the federal rehabilitation credit provided for in Section 47 of
8 Title 26 of the United States Code. The credit authorized by this
9 section may be claimed at any time after the relevant local
10 governmental body responsible for doing so issues a certificate of
11 occupancy or other document that is a precondition for the
12 applicable use of the building or structure that is the basis upon
13 which the credit authorized by this section is claimed.

14 C. All requirements with respect to qualification for the
15 credit authorized by Section 47 of Title 26 of the United States
16 Code shall be applicable to the credit authorized by this section.

17 D. If the credit allowed pursuant to this section exceeds the
18 amount of income taxes due or if there are no state income taxes due
19 on the income of the taxpayer, the amount of the credit allowed but
20 not used in any taxable year may be carried forward as a credit
21 against subsequent income tax liability for a period not exceeding
22 ten (10) years following the qualified expenditures.

23 E. All rehabilitation work to which the credit may be applied
24 shall be reviewed by the State Historic Preservation Office which

1 will in turn forward the information to the National Park Service
2 for certification in accordance with 36 C.F.R., Part 67. A
3 certified historic structure may be rehabilitated for any lawful use
4 or uses, including without limitation mixed uses and still retain
5 eligibility for the credit provided for in this section.

6 F. ~~The~~ 1. For credits generated prior to January 1, 2015, the
7 amount of the credit allowed for any credit claimed for a certified
8 historic hotel or historic newspaper plant building or any certified
9 historic structure, but not used, shall be freely transferable, in
10 whole or in part, to subsequent transferees at any time during the
11 five (5) years following the year of qualification. Any person to
12 whom or to which a tax credit is transferred shall have only such
13 rights to claim and use the credit under the terms that would have
14 applied to the entity by whom or by which the tax credit was
15 transferred. The provisions of this subsection shall not limit the
16 ability of a tax credit transferee to reduce the tax liability of
17 the transferee regardless of the actual tax liability of the tax
18 credit transferor for the relevant taxable period. The transferor
19 of the credit and the transferee shall jointly file a copy of the
20 written credit transfer agreement with the Oklahoma Tax Commission
21 within thirty (30) days of the transfer. Such filing of the written
22 credit transfer agreement with the Oklahoma Tax Commission shall
23 perfect such transfer. The written agreement shall contain the
24 name, address and taxpayer identification number of the parties to

1 the transfer, the amount of credit being transferred, the year the
2 credit was originally allowed to the transferor, the tax year or
3 years for which the credit may be claimed, and a representation by
4 the transferor that the transferor has neither claimed for its own
5 behalf nor conveyed such credits to any other transferee. The Tax
6 Commission shall develop a standard form for use by subsequent
7 transferees of the credit demonstrating eligibility for the
8 transferee to reduce its applicable tax liabilities resulting from
9 ownership of the credit. The Tax Commission shall develop a system
10 to record and track the transfers of the credit and certify the
11 ownership of the credit and may promulgate rules to permit
12 verification of the validity and timeliness of a tax credit claimed
13 upon a tax return pursuant to this subsection but shall not
14 promulgate any rules which unduly restrict or hinder the transfers
15 of such tax credit.

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

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

14 G. Notwithstanding any other provisions in this section, on or
15 after January 1, 2009, if a credit allowed pursuant to this section
16 which has been transferred is subsequently reduced as the result of
17 an adjustment by the Internal Revenue Service, Tax Commission, or
18 any other applicable government agency, only the transferor
19 originally allowed the credit and not any subsequent transferee of
20 the credit, shall be held liable to repay any amount of disallowed
21 credit.

22 H. As used in this section:

23 1. "Certified historic hotel or historic newspaper plant
24 building" means a hotel or newspaper plant building that is listed

1 on the National Register of Historic Places within thirty (30)
2 months of taking the credit pursuant to this section.

3 2. "Certified historic structure" means a building that is
4 listed on the National Register of Historic Places within thirty
5 (30) months of taking the credit pursuant to this section or a
6 building located in Oklahoma which is certified by the State
7 Historic Preservation Office as contributing to the historic
8 significance of a certified historic district listed on the National
9 Register of Historic Places, or a local district that has been
10 certified by the State Historic Preservation Office as eligible for
11 listing in the National Register of Historic Places; and

12 3. "Qualified rehabilitation expenditures" means capital
13 expenditures that qualify for the federal rehabilitation credit
14 provided in Section 47 of Title 26 of the United States Code and
15 that were paid after December 31, 2000. Qualified rehabilitation
16 expenditures do not include capital expenditures for nonhistoric
17 additions except an addition that is required by state or federal
18 regulations that relate to safety or accessibility. In addition,
19 qualified rehabilitation expenditures do not include expenditures
20 related to the cost of acquisition of the property.

21 I. No credit otherwise authorized by the provisions of this
22 section may be claimed for any event, transaction, investment,
23 expenditure or other act occurring on or after July 1, 2010, for
24 which the credit would otherwise be allowable until the provisions

1 of this subsection shall cease to be operative on July 1, 2012.
2 Beginning July 1, 2012, the credit authorized by this section may be
3 claimed for any event, transaction, investment, expenditure or other
4 act occurring on or after July 1, 2010, and before January 1, 2022,
5 according to the provisions of this section. Any tax credits which
6 accrue during the period of July 1, 2010, through June 30, 2012, may
7 not be claimed for any period prior to the taxable year beginning
8 January 1, 2012. No credits which accrue during the period of July
9 1, 2010, through June 30, 2012, may be used to file an amended tax
10 return for any taxable year prior to the taxable year beginning
11 January 1, 2012.

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

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