STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

SENATE BILL 1155 By: Standridge

AS INTRODUCED

An Act relating to tax credits; amending 68 O.S. 2011, Sections 2357.4, as amended by Section 1, Chapter 336, O.S.L. 2015, 2357.41, 2357.45, 2357.46, 2357.104, 2357.206, as last amended by Section 1, Chapter 361, O.S.L. 2015, Section 1, Chapter 421, O.S.L. 2014 (68 O.S Supp. 2015, Sections 2357.4, 2327.104, 2357.206 and 2357.403), which relate to tax credits for certain events, transactions, investments, expenditures or other acts; subject to certain condition, limiting the time period during credits are allowed for investment in depreciable property or new employment relating to manufacturing, rehabilitation of certain historic hotel or newspaper buildings, donations for independent biomedical research or cancer research institutes, energy efficient residential property construction, railroad reconstruction or replacement expenditures, donations to eligible scholarship-granting or educational improvement grant organizations and investment in qualified affordable housing projects; and providing an effective date.

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

SECTION 1. AMENDATORY 68 O.S. 2011, Section 2357.4, as amended by Section 1, Chapter 336, O.S.L. 2015 (68 O.S. Supp. 2015, 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 and in subsections J ~~and~~, K and L of this section, 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 Section 1357 of this title in this state or a qualified web search portal as defined in Section 1357 of this title; or

2. A net increase in the number of full-time-equivalent employees 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 defined in Section 1357 of this title in this state or in a qualified web search portal as defined in Section 1357 of this title including employees engaged in support services.

B. Except as otherwise provided in subsection F of Section 3658 of this title and in subsections J ~~and~~, K and L of this section, 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;

2. To the extent not used in those years in order to each of the fifteen (15) years following the initial five-year period; and

3. If a C corporation that otherwise qualified for the credits under subsection A of this section subsequently changes its operating status to that of a pass-through entity which is being treated as the same entity for federal tax purposes, the credits will continue to be available as if the pass-through entity had originally qualified for the credits subject to the limitations of this section.

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. No credit otherwise authorized by the provisions of this section may be claimed for any event, transaction, investment, expenditure or other act occurring on or after July 1, 2010, for which the credit would otherwise be allowable until the provisions of this subsection shall cease to be operative on July 1, 2012. Beginning July 1, 2012, the credit authorized by this section may be claimed for any event, transaction, investment, expenditure or other act occurring on or after July 1, 2010, according to the provisions of this section; provided, credits accrued during the period from

July 1, 2010, through June 30, 2012, shall be limited to a period of two (2) taxable years. The credit shall be limited in each taxable year to fifty percent (50%) of the total amount of the accrued credit. Any tax credits which accrue during the period of July 1, 2010, through June 30, 2012, may not be claimed for any period prior to the taxable year beginning January 1, 2012. No credits which accrue during the period of July 1, 2010, through June 30, 2012, may be used to file an amended tax return for any taxable year prior to the taxable year beginning January 1, 2012.

K. Beginning January 1, 2017, except with respect to tax credits allowed from investment or job creation occurring prior to January 1, 2017, the credits authorized by this section shall not be allowed for investment or job creation in electric power generation by means of wind as described by the North American Industry Classification System, No. 221119.

L. No credit shall be allowed pursuant to subsections A and B of this section for investment or job creation occurring on or after January 1, 2018 unless this section is reauthorized by the Oklahoma Legislature after evaluation by the Incentive Evaluation Commission pursuant to Section 7004 of Title 62 of the Oklahoma Statutes.

SECTION 2. AMENDATORY 68 O.S. 2011, Section 2357.41, is amended to read as follows:

Section 2357.41. A. Except as otherwise provided by ~~subsection I~~ subsections I and J of this section, for tax years beginning after

December 31, 2000, 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 incurred in connection with any certified historic hotel or historic newspaper plant building located in an increment or incentive district created pursuant to the Local Development Act or for qualified rehabilitation expenditures incurred after January 1, 2006, in connection with any certified historic structure.

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

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

D. If the credit allowed pursuant to this section exceeds the amount of income taxes due or if there are no state income taxes due on the income of the taxpayer, the amount of the 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 ten (10) years following the qualified expenditures.

E. All rehabilitation work to which the credit may be applied shall be reviewed by the State Historic Preservation Office which will in turn forward the information to the National Park Service for certification in accordance with 36 C.F.R., Part 67. A certified historic structure may be rehabilitated for any lawful use or uses, including without limitation mixed uses and still retain eligibility for the credit provided for in this section.

F. The amount of the credit allowed for any credit claimed for a certified historic hotel or historic newspaper plant building or any certified historic structure, but not used, shall be freely transferable, in whole or in part, to subsequent transferees at any time during the five (5) years following the year of qualification. Any person to whom or to which a tax credit is transferred shall have only such rights to claim and use the credit under the terms that would have applied to the entity by whom or by which the tax credit was transferred. The provisions of this subsection shall not limit the ability of a tax credit transferee to reduce the tax liability of the transferee regardless of the actual tax liability of the tax credit transferor for the relevant taxable period. The transferor of the credit and the transferee shall jointly file a copy of the written credit transfer agreement with the Oklahoma Tax

Commission within thirty (30) days of the transfer. Such filing of the written credit transfer agreement with the Oklahoma Tax Commission shall perfect such transfer. The written agreement shall contain the name, address and taxpayer identification number of the parties to the transfer, the amount of credit being transferred, the year the credit was originally allowed to the transferor, the tax year or years for which the credit may be claimed, and a representation by the transferor that the transferor has neither claimed for its own behalf nor conveyed such credits to any other transferee. The Tax Commission shall develop a standard form for use by subsequent transferees of the credit demonstrating eligibility for the transferee to reduce its applicable tax liabilities resulting from ownership of the credit. The Tax Commission shall develop a system to record and track the transfers of the credit and certify the ownership of the credit and 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.

G. Notwithstanding any other provisions in this section, on or after January 1, 2009, if a credit allowed pursuant to this section which has been transferred is subsequently reduced as the result of an adjustment by the Internal Revenue Service, Tax Commission, or any other applicable government agency, only the transferor

originally allowed the credit and not any subsequent transferee of the credit, shall be held liable to repay any amount of disallowed credit.

H. As used in this section:

1. "Certified historic hotel or historic newspaper plant building" means a hotel or newspaper plant building that is listed on the National Register of Historic Places within thirty (30) months of taking the credit pursuant to this section.

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

3. "Qualified rehabilitation expenditures" means capital expenditures that qualify for the federal rehabilitation credit provided in Section 47 of Title 26 of the United States Code and that were paid after December 31, 2000. Qualified rehabilitation expenditures do not include capital expenditures for nonhistoric additions except an addition that is required by state or federal regulations that relate to safety or accessibility. In addition,

qualified rehabilitation expenditures do not include expenditures related to the cost of acquisition of the property.

I. No credit otherwise authorized by the provisions of this section may be claimed for any event, transaction, investment, expenditure or other act occurring on or after July 1, 2010, for which the credit would otherwise be allowable until the provisions of this subsection shall cease to be operative on July 1, 2012. Beginning July 1, 2012, the credit authorized by this section may be claimed for any event, transaction, investment, expenditure or other act occurring on or after July 1, 2010, according to the provisions of this section. Any tax credits which accrue during the period of July 1, 2010, through June 30, 2012, may not be claimed for any period prior to the taxable year beginning January 1, 2012. No credits which accrue during the period of July 1, 2010, through June 30, 2012, may be used to file an amended tax return for any taxable year prior to the taxable year beginning January 1, 2012.

J. No credit shall be allowed pursuant to subsection A of this section for activities on or after January 1, 2018 unless this section is reauthorized by the Oklahoma Legislature after evaluation by the Incentive Evaluation Commission pursuant to Section 7004 of Title 62 of the Oklahoma Statutes.

SECTION 3. AMENDATORY 68 O.S. 2011, Section 2357.45, is amended to read as follows:

Section 2357.45. A. 1. ~~For~~ Except as otherwise provided in subsection E of this section, for tax years beginning after December 31, 2004, there shall be allowed against the tax imposed by Section 2355 of this title, a credit for any taxpayer who makes a donation to an independent biomedical research institute and for tax years beginning after December 31, 2010, a credit for any taxpayer who makes a donation to a cancer research institute.

2. The credit authorized by paragraph 1 of this subsection shall be limited as follows:

a. for calendar year 2007 and all subsequent years, the credit percentage, not to exceed fifty percent (50%), shall be adjusted annually so that the total estimate of the credits does not exceed Two Million Dollars ($2,000,000.00) annually. The formula to be used for the percentage adjusted shall be fifty percent (50%) times One Million Dollars ($1,000,000.00) divided by the credits claimed in the preceding year for each donation to an independent biomedical research institute and fifty percent (50%) times One Million Dollars ($1,000,000.00) divided by the credits claimed in the preceding year for each donation to a cancer research institute,

b. in no event shall a taxpayer claim more than one credit for a donation to any independent biomedical

research institute and one credit for a donation to a cancer research institute in each taxable year nor shall the credit exceed One Thousand Dollars ($1,000.00) for each taxpayer for each type of donation,

c. for tax year 2011, no more than Fifty Thousand Dollars ($50,000.00) in total tax credits for donations to a cancer research institute shall be allowed,

d. in no event shall more than fifty percent (50%) of the Two Million Dollars ($2,000,000.00) in total tax credits authorized by this section, for any calendar year after ~~the effective date of this act~~ January 1, 2011, be allocated for credits for donations to a cancer research institute, and

e. in the event the total tax credits authorized by this section exceed One Million Dollars ($1,000,000.00) in any calendar year for either a cancer research institute or an independent biomedical research institute, the Oklahoma Tax Commission shall permit any excess over One Million Dollars ($1,000,000.00) but shall factor such excess into the percentage adjustment formula for subsequent years for that type of donation. However, any such adjustment to the formula for donations to an independent biomedical

research institute shall not affect the formula for donations to a cancer research institute, and any such adjustment to the formula for donations to a cancer research institute shall not affect the formula for donations to an independent biomedical research institute.

3. For purposes of this section, "independent biomedical research institute" means an organization which is exempt from taxation pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3) whose primary focus is conducting peer-reviewed basic biomedical research. The organization shall:

a. have a board of directors,

b. be able to accept grants in its own name,

c. be an identifiable institute that has its own employees and administrative staff, and

d. receive at least Fifteen Million Dollars ($15,000,000.00) in National Institute of Health funding each year.

4. For purposes of this section, "cancer research institute" means an organization which is exempt from taxation pursuant to the Internal Revenue Code and whose primary focus is raising the standard of cancer clinical care in Oklahoma through peer-reviewed cancer research and education or a not-for-profit supporting

organization, as that term is defined by the Internal Revenue Code, affiliated with a tax-exempt organization whose primary focus is raising the standard of cancer clinical care in Oklahoma through peer-reviewed cancer research and education. The tax-exempt organization whose primary focus is raising the standard of cancer clinical care in Oklahoma through peer-reviewed cancer research and education shall:

a. either be an independent research institute or a program that is part of a state university which is a member of The Oklahoma State System of Higher Education, and

b. receive at least Four Million Dollars ($4,000,000.00) in National Cancer Institute funding each year.

B. In no event shall the amount of the credit exceed the amount of any tax liability of the taxpayer.

C. Any credits allowed but not used in any tax year may be carried over, in order, to each of the four (4) years following the year of qualification.

D. The Tax Commission shall have the authority to prescribe forms for purposes of claiming the credit authorized by this section.

<u>E. No credit shall be allowed pursuant to subsection A of this section for donations made or after January 1, 2018 unless this section is reauthorized by the Oklahoma Legislature after evaluation</u>

by the Incentive Evaluation Commission pursuant to Section 7004 of Title 62 of the Oklahoma Statutes.

SECTION 4. AMENDATORY 68 O.S. 2011, Section 2357.46, is amended to read as follows:

Section 2357.46. A. Except as otherwise provided by ~~subsection G~~ subsections G and H of this section, for tax years beginning after December 31, 2005, there shall be allowed a credit against the tax imposed by Section 2355 of ~~Title 68 of Oklahoma Statutes~~ this title for eligible expenditures incurred by a contractor in the construction of energy efficient residential property of two thousand (2,000) square feet or less. The amount of the credit shall be based upon the following:

1. For any eligible energy efficient residential property constructed and certified as forty percent (40%) or more above the International Energy Conservation Code 2003 and any supplement in effect at the time of completion, the amount of the credit shall be equal to the eligible expenses, not to exceed Four Thousand Dollars ($4,000.00) for the taxpayer who is the contractor; and

2. For any eligible energy efficient residential property constructed and certified as between twenty percent (20%) and thirty-nine percent (39%) above the International Energy Conservation Code 2003 and any supplement in effect at the time of completion, the credit shall be equal to the eligible expenditures,

not to exceed Two Thousand Dollars ($2,000.00) for the taxpayer who is the contractor.

B. As used in this section:

1. "Eligible expenditure" means any:

a. energy efficient heating or cooling system,

b. insulation material or system which is specifically and primarily designed to reduce the heat gain or loss of a residential property when installed in or on such property,

c. exterior windows, including skylights,

d. exterior doors, and

e. any metal roof installed on a residential property, but only if such roof has appropriate pigmented coatings which are specifically and primarily designed to reduce the heat gain of such dwelling unit and which meet Energy Star program requirements;

2. "Contractor" means the taxpayer who constructed the residential property or manufactured home, or if more than one taxpayer qualifies as the contractor, the primary contractor; and

3. "Eligible energy efficient residential property" means a newly constructed residential property or manufactured home property which is located in the State of Oklahoma and substantially complete after December 31, 2005, and which is two thousand (2,000) square feet or less:

a. for the credit provided pursuant to paragraph 1 of subsection A of this section, which is certified by an accredited Residential Energy Services Network Provider using the Home Energy Rating System to have:

(1) a level of annual heating and cooling energy consumption which is at least forty percent (40%) below the annual level of heating and cooling energy consumption of a comparable residential property constructed in accordance with the standards of Chapter 4 of the 2003 International Energy Conservation Code, as such code is in effect on ~~the effective date of this act~~ November 1, 2005,

(2) heating and cooling equipment efficiencies which correspond to the minimum allowed under the regulations established by the Department of Energy pursuant to the National Appliance Energy Conservation Act of 1987 and in effect at the time of construction of the property, and

(3) building envelope component improvements which account for at least one-fifth of the reduced annual heating and cooling energy consumption levels,

b. for the credit provided pursuant to paragraph 2 of subsection A of this section, which is certified by an accredited Residential Energy Services Network Provider using the Home Energy Rating System to have:

(1) a level of annual heating and cooling energy consumption which is between twenty percent (20%) and thirty-nine percent (39%) below the annual level of heating and cooling energy consumption of a comparable residential property constructed in accordance with the standards of Chapter 4 of the 2003 International Energy Conservation Code, as such code is in effect on ~~the effective date of this act~~ November 1, 2005,

(2) heating and cooling equipment efficiencies which correspond to the minimum allowed under the regulations established by the Department of Energy pursuant to the National Appliance Energy Conservation Act of 1987 and in effect at the time of construction of the property, and

(3) building envelope component improvements which account for at least one-third of the reduced annual heating and cooling energy consumption levels.

C. The credit provided for in subsection A of this section may only be claimed once for the contractor of any eligible residential energy efficient property during the taxable year when the property is substantially complete.

D. If the credit allowed pursuant to this section exceeds the amount of 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 four (4) years following the qualified expenditures.

E. For credits earned on or after ~~the effective date of this act~~ July 1, 2006, the credits authorized by this section shall be freely transferable to subsequent transferees.

F. The Oklahoma Tax Commission shall promulgate rules necessary to implement this act.

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

H. No credit shall be allowed pursuant to subsection A of this section for eligible expenditures made on or after January 1, 2018 unless this section is reauthorized by the Oklahoma Legislature after evaluation by the Incentive Evaluation Commission pursuant to Section 7004 of Title 62 of the Oklahoma Statutes.

SECTION 5. AMENDATORY 68 O.S. 2011, Section 2357.104, is amended to read as follows:

Section 2357.104. A. Except as otherwise provided by ~~subsection G~~ subsections G and H of this section, for taxable years beginning after December 31, 2005, 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.

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

2. In tax year 2009 and subsequent tax years, a taxpayer may elect to increase the limit provided in paragraph 1 of this subsection to an amount equal to three times the limit specified in paragraph 1 of this subsection for qualified expenditures made in

the tax year, provided the taxpayer may only claim one third (1/3) of the credit in any one taxable period.

C. The credit allowed pursuant to subsection A of this section but not used shall be freely transferable, by written agreement, to subsequent transferees at any time during the five (5) years following the year of qualification. An eligible transferee shall be any taxpayer subject to the tax imposed by Section 2355 of this title. The person originally allowed the credit and the subsequent transferee shall jointly file a copy of the written credit transfer agreement with the Oklahoma Tax Commission within thirty (30) days of the transfer. The written agreement shall contain the name, address and taxpayer identification number of the parties to the transfer, the amount of credit being transferred, the year the credit was originally allowed to the transferring person and the tax year or years for which the credit may be claimed. The Tax Commission shall promulgate rules to permit verification of the 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 Department of Transportation shall promulgate rules to permit verification of the eligibility of an eligible taxpayer's expenditures for the purpose of claiming the credit. The rules shall provide for the approval of qualified railroad reconstruction or replacement expenditures prior to commencement of a project and provide a

certificate of verification upon completion of a project that uses qualified railroad reconstruction or replacement expenditures. The certificate of verification shall satisfy all requirements of the Tax Commission pertaining to the eligibility of the person claiming the credit.

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

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

F. As used in this section:

1. "Class II and Class III railroad" means a railroad that is classified by the United States Surface Transportation Board as a Class II or Class III railroad;

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

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

a. reconstruction or replacement of railroad infrastructure including track, roadbed, bridges, industrial leads and track-related structures owned or

leased by a Class II or Class III railroad as of January 1, 2006, or

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

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

H. No credit shall be allowed pursuant to subsection A of this section for expenditures made on or after January 1, 2018 unless this section is reauthorized by the Oklahoma Legislature after evaluation by the Incentive Evaluation Commission pursuant to Section 7004 of Title 62 of the Oklahoma Statutes.

SECTION 6. AMENDATORY 68 O.S. 2011, Section 2357.206, as last amended by Section 1, Chapter 361, O.S.L. 2015 (68 O.S. Supp. 2015, Section 2357.206), is amended to read as follows:

Section 2357.206. A. This act shall be known and may be cited as the "Oklahoma Equal Opportunity Education Scholarship Act".

B. 1. Except as provided in ~~subsection F~~ subsections F and M of this section, after August 26, 2011, there shall be allowed a credit for any taxpayer who makes a contribution to an eligible scholarship-granting organization. The credit shall be equal to fifty percent (50%) of the total amount of contributions made during a taxable year, not to exceed One Thousand Dollars ($1,000.00) for single individuals, Two Thousand Dollars ($2,000.00) for married individuals filing jointly, or One Hundred Thousand Dollars ($100,000.00) for any taxpayer which is a legal business entity including limited and general partnerships, corporations, subchapter S corporations and limited liability companies; provided, if total credits claimed pursuant to this paragraph exceed the caps established pursuant to paragraph 1 of subsection D of this section, the credit shall be equal to the taxpayer's proportionate share of the cap for the taxable year, as determined pursuant to subsection H of this section.

2. For any taxpayer who makes a contribution to an eligible scholarship-granting organization and makes a written commitment to contribute the same amount for an additional year, the credit for the first year and the additional year shall be equal to seventy-five percent (75%) of the total amount of the contribution made during a taxable year, not to exceed the amounts established in paragraph 1 of this subsection for the taxable year in which the credit provided in this subsection is claimed. The taxpayer shall

provide evidence of the written commitment to the Oklahoma Tax Commission at the time of filing the refund claim.

3. The credits authorized pursuant to the provisions of this subsection shall be allocable to the partners, shareholders, members or other equity owners of a taxpayer that is authorized to be treated as a partnership for purposes of federal income tax reporting for the taxable year for which the tax credits authorized by this subsection are claimed on the applicable return, together with required schedules, forms or reports of the partners, shareholders, members or other equity owners of the taxpayer. Tax credits which are allocated to such equity owners shall only be limited in amount for the income tax return of a natural person or persons based upon the limitation of the total credit amount to the entity from which the tax credits have been allocated and shall not be limited to One Thousand Dollars ($1,000.00) for single individuals or limited to Two Thousand Dollars ($2,000.00) for married persons filing a joint return.

4. On or before December 31, 2017, and once every four (4) years thereafter, such scholarship-granting organization and educational improvement granting organization shall submit to the Governor, President Pro Tempore of the Senate and the Speaker of the House of Representatives, an audited financial statement for the organization along with information detailing the benefits, successes or failures of the program.

C. 1. Except as provided in ~~subsection F~~ subsections F and M of this section, after August 26, 2011, there shall be allowed a credit for any taxpayer who makes a contribution to an eligible educational improvement grant organization. The credit shall be equal to fifty percent (50%) of the total amount of contributions made during a taxable year, not to exceed One Thousand Dollars ($1,000.00) for single individuals, Two Thousand Dollars ($2,000.00) for married individuals filing jointly, or One Hundred Thousand Dollars ($100,000.00) for any taxpayer which is a legal business entity including limited and general partnerships, corporations, subchapter S corporations and limited liability companies; provided, if total credits claimed pursuant to this paragraph exceed the cap established pursuant to paragraph 2 of subsection D of this section, the credit shall be equal to the taxpayer's proportionate share of the cap for the taxable year, as determined pursuant to subsection H of this section.

2. For any taxpayer who makes a contribution to an eligible educational improvement grant organization and makes a written commitment to contribute the same amount for an additional year, the credit for the first year and the additional year shall be equal to seventy-five percent (75%) of the total amount of the contribution made during a taxable year, not to exceed the amounts established in paragraph 1 of this subsection for the taxable year in which the credit provided in this subsection is claimed; provided, if total

credits claimed pursuant to this paragraph exceed the cap established pursuant to paragraph 3 of this subsection, the credit shall be equal to the taxpayer's proportionate share of the cap for the taxable year, as determined pursuant to subsection H of this section. The taxpayer shall provide evidence of the written commitment to the Oklahoma Tax Commission at the time of filing the refund claim.

3. The credits authorized pursuant to the provisions of this subsection shall be allocable to the partners, shareholders, members or other equity owners of a taxpayer that is authorized to be treated as a partnership for purposes of federal income tax reporting for the taxable year for which the tax credits authorized by this subsection are claimed on the applicable return, together with required schedules, forms or reports of the partners, shareholders, members or other equity owners of the taxpayer. Tax credits which are allocated to such equity owners shall only be limited in amount for the income tax return of a natural person or persons based upon the limitation of the total credit amount to the entity from which the tax credits have been allocated and shall not be limited to One Thousand Dollars ($1,000.00) for single individuals or limited to Two Thousand Dollars ($2,000.00) for married persons filing a joint return.

D. 1. The total credits authorized pursuant to subsection B of this section for all taxpayers shall not exceed Three Million Five Hundred Thousand Dollars ($3,500,000.00) annually.

2. The total credits authorized pursuant to subsection C of this section for all taxpayers shall not exceed One Million Five Hundred Thousand Dollars ($1,500,000.00) annually.

3. The cap on total credits provided for in this subsection shall be allocated by the Tax Commission as provided in subsection H of this section.

E. For credits claimed for eligible contributions made during tax year 2014 and thereafter, a credit shall not be allowed by the Oklahoma Tax Commission for contributions made to a scholarship-granting organization or an educational improvement grant organization if that organization's percentage of funds actually awarded is less than ninety percent (90%). For purposes of this section, the "percentage of funds actually awarded" shall be determined by dividing the total amount of funds actually awarded as educational scholarships or educational improvement grants over the most recent twenty-four (24) months by the total amount available to award as educational scholarships or educational improvement grants over the most recent twenty-four (24) months.

F. Any tax credits which are earned by a taxpayer pursuant to this section during the time period beginning on ~~the effective date of this act~~ August 26, 2011, through December 31, 2012, may not be

claimed for any period prior to the taxable year beginning January 1, 2013. No credits which accrue during the time period beginning on ~~the effective date of this act~~ August 26, 2011, through December 31, 2012, may be used to file an amended tax return for any taxable year prior to the taxable year beginning January 1, 2013.

G. As used in this section:

1. "Eligible student" means a child of school age who is lawfully present in the United States and who is a member of a household in which the total annual income during the preceding tax year does not exceed an amount equal to three hundred percent (300%) of the income standard used to qualify for a free or reduced school lunch or who, during the immediately preceding school year, attended or, by virtue of the location of such student's place of residence, was eligible to attend a public school in this state which has been identified for school improvement as determined by the State Board of Education pursuant to the requirements of the No Child Left Behind Act of 2001, P.L. No. 107-110. Once a student has received an educational scholarship, as defined in paragraph 3 of this subsection, the student and any siblings who are members of the same household shall remain eligible until they graduate from high school or reach twenty-one (21) years of age, whichever occurs first;

2. "Eligible special needs student" means a child who has been provided services under an Individual Family Service Plan through the SoonerStart program and during transition was evaluated and

determined to be eligible for school district services, a child of school age who has attended public school in our state with an individualized education program pursuant to the Individuals With Disabilities Education Act, 20 U.S.C.A., Section 1400 et seq. or a child who has been diagnosed by a clinical professional as having a significant disability that will affect learning and who has been approved by the board of a scholarship-granting organization;

3. "Educational scholarships" means:

a. scholarships to an eligible student of up to Five Thousand Dollars ($5,000.00) or eighty percent (80%) of the statewide annual average per-pupil expenditure as determined by the National Center for Education Statistics, U.S. Department of Education, whichever is greater, to cover all or part of the tuition, fees and transportation costs of a qualified school which is accredited by the State Board of Education or an accrediting association approved by the Board pursuant to Section 3-104 of Title 70 of the Oklahoma Statutes,

b. scholarships to an eligible student of up to Five Thousand Dollars ($5,000.00) or eighty percent (80%) of the statewide annual average per-pupil expenditure as determined by the National Center for Education Statistics, U.S. Department of Education, whichever is greater, to cover the educational costs of a qualified

school which does not charge tuition, which enrolls special populations of students and which is accredited by the State Board of Education or an accrediting association approved by the Board pursuant to Section 3-104 of Title 70 of the Oklahoma Statutes, or

c. scholarships to an eligible special needs student of up to Twenty-five Thousand Dollars ($25,000.00) to cover all or part of the tuition, fees and transportation costs of a qualified school for eligible special needs students which is accredited by the State Board of Education or an accrediting association approved by the Board pursuant to Section 3-104 of Title 70 of the Oklahoma Statutes;

4. "Low-income eligible student" means an eligible student or eligible special needs student who qualifies for a free or reduced-price lunch;

5. "Qualified school" means an early childhood, elementary or secondary private school in this state, including schools which provide special educational programs for three-year-olds or prekindergarten educational programs for four-year-olds, which:

a. is accredited by the State Board of Education or an accrediting association approved by the Board pursuant to Section 3-104 of Title 70 of the Oklahoma Statutes,

b. is in compliance with all applicable health and safety laws and codes,

c. has a stated policy against discrimination in admissions on the basis of race, color, national origin or disability, and

d. ensures academic accountability to parents and guardians of students through regular progress reports;

6. "Qualified school for eligible special needs students" means an early childhood, elementary or secondary private school in a county in this state, including schools which provide special educational programs for three-year-olds or prekindergarten educational programs for four-year-olds;

7. "Scholarship-granting organization" means an organization which:

a. is a nonprofit entity exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3),

b. distributes periodic scholarship payments as checks made out to an eligible student's or eligible special needs student's parent or guardian and mailed to the qualified school where the student is enrolled,

c. spends no more than ten percent (10%) of its annual revenue on expenditures other than educational

scholarships as defined in paragraph 3 of this subsection,

d. spends each year a portion of its expenditures on educational scholarships for low-income eligible students, as defined in paragraph 4 of this subsection, in an amount equal to or greater than the percentage of low-income eligible students in the state,

e. ensures that scholarships are portable during the school year and can be used at any qualified school that accepts the eligible student or at any qualified school for special needs students that accepts the eligible special needs student,

f. registers with the Oklahoma Tax Commission as a scholarship-granting organization, and

g. has policies in place to:

(1) carry out criminal background checks on all employees and board members to ensure that no individual is involved with the organization who might reasonably pose a risk to the appropriate use of contributed funds, and

(2) maintain full and accurate records with respect to the receipt of contributions and expenditures of those contributions and supply such records

and any other documentation required by the Tax Commission to demonstrate financial accountability;

8. "Annual revenue" means the total amount or value of contributions received by an organization from taxpayers awarded credits during the organization's fiscal year and all amounts earned from interest or investments;

9. "Public school" means public schools as defined in Section 1-106 of Title 70 of the Oklahoma Statutes;

10. "Eligible school" means any public school that is not located within a ten-mile radius of a qualified school in this state, or any public school that is located within a ten-mile radius of a qualified school in this state but offers grade-level instruction different from the qualified school or any public school located within a public school district with fewer than four thousand five hundred (4,500) students;

11. "Early childhood education program" means a special educational program for eligible special needs students who are three (3) years of age or a prekindergarten educational program provided to children who are at least four (4) years of age but not more than five (5) years of age on or before September 1;

12. "Innovative educational program" means an advanced academic or academic improvement program that is not part of the regular coursework of a public school but that enhances the curriculum or

academic program of the school or provides early childhood education programs to students;

13. "Educational improvement grant" means a grant to an eligible public school to implement an innovative educational program for students, including the ability for multiple public schools to make an application and be awarded a grant to jointly provide an innovative educational program; and

14. "Educational improvement grant organization" means an organization which:

a. is a nonprofit entity exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), and

b. contributes at least ninety percent (90%) of its annual receipts as grants to eligible schools for innovative educational programs. For purposes of this subparagraph, an educational improvement grant organization contributes its annual cash receipts when it expends or otherwise irrevocably encumbers those funds for expenditure during the then current fiscal year of the organization or during the next succeeding fiscal year of the organization.

H. Total credits authorized by this section shall be allocated as follows:

1. By January 10 of the year immediately following each calendar year, a scholarship-granting organization or an educational improvement grant organization which accepts contributions pursuant to this section shall provide electronically to the Tax Commission information on each contribution accepted during such taxable year. At least once each taxable year, the scholarship-granting organization or the educational improvement grant organization shall notify each contributor that Oklahoma law provides for a total, statewide cap on the amount of income tax credits allowed annually;

2. a. If the Tax Commission determines the total combined credits claimed for contributions made to scholarship-granting organizations during the most recently completed calendar year by all taxpayers are in excess of the statewide caps provided in paragraph 1 of subsection D of this section, the Tax Commission shall determine the percentage of the contribution which establishes the proportionate share of the credit which may be claimed by any taxpayer so that the maximum credits authorized by this section are not exceeded.

b. If the Tax Commission determines the total combined credits claimed for contributions made to educational improvement grant organizations during the most recently completed calendar year by all taxpayers are

in excess of the statewide caps provided in paragraph 2 of subsection D of this section, the Tax Commission shall determine the percentage of the contribution which establishes the proportionate share of the credit which may be claimed by any taxpayer so that the maximum credits authorized by this section are not exceeded; and

3. The Tax Commission shall publish the percentage of the contribution which may be claimed as a credit by contributors for the most recently completed calendar year on the Tax Commission website no later than February 15 of each calendar year for contributions made the previous year. Each scholarship-granting organization or educational improvement grant organization shall notify contributors of that amount annually.

I. The credit authorized by this section shall not be used to reduce the tax liability of the taxpayer to less than zero (0).

J. Any credits allowed but not used in any tax year may be carried over, in order, to each of the three (3) years following the year of qualification.

K. 1. In order to qualify under this section, an educational improvement grant organization shall submit an application with information to the Oklahoma Tax Commission on a form prescribed by the Tax Commission that:

a. enables the Tax Commission to confirm that the organization is a nonprofit entity exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), and

b. describes the proposed innovative educational program or programs supported by the organization.

2. The Tax Commission shall review and approve or disapprove the application, in consultation with the State Department of Education.

3. In order to maintain eligibility under this section, an educational improvement grant organization shall annually report the following information to the Tax Commission by September 1 of each year:

a. the name of the innovative educational program or programs and the total amount of the grant or grants made to those programs during the immediately preceding school year,

b. a description of how each grant was utilized during the immediately preceding school year and a description of any demonstrated or expected innovative educational improvements,

c. the names of the public school and school districts where innovative educational programs that received

grants during the immediately preceding school year were implemented,

d. where the organization collects information on a county-by-county basis, and

e. the total number and total amount of grants made during the immediately preceding school year for innovative educational programs at public school by each county in which the organization made grants.

4. The information required under paragraph 3 of this subsection shall be submitted on a form provided by the Tax Commission. No later than May 1 of each year, the Tax Commission shall annually distribute sample forms together with the forms on which the reports are required to be made to each approved organization.

5. The Tax Commission shall not require any other information be provided by an organization, except as expressly authorized in this section.

L. In consultation with the State Department of Education, the Tax Commission shall promulgate rules necessary to implement this act. The rules shall include procedures for the registration of a scholarship-granting organization or an educational improvement grant organization for purposes of determining if the organization meets the requirements of this act or for the revocation of the

registration of an organization, if applicable, and for notice as required in subsection H of this section.

M. No credit shall be allowed pursuant to subsections B and C of this section for donations made on or after January 1, 2018 unless this section is reauthorized by the Oklahoma Legislature after evaluation by the Incentive Evaluation Commission pursuant to Section 7004 of Title 62 of the Oklahoma Statutes.

SECTION 7. AMENDATORY Section 1, Chapter 421, O.S.L. 2014 (68 O.S. Supp. 2015, Section 2357.403), is amended to read as follows:

Section 2357.403. A. This act shall be known and may be cited as the "Oklahoma Affordable Housing Act".

B. As used in this section:

1. "Allocation year" means the year for which the Oklahoma Housing Finance Agency allocates credits pursuant to this section;

2. "Eligibility statement" means a statement authorized and issued by the Oklahoma Housing Finance Agency certifying that a given project qualifies for the Oklahoma Affordable Housing Tax Credit authorized by this section. The Oklahoma Housing Finance Agency, under Title 330, Oklahoma Housing Finance Agency, Chapter 36, Affordable Housing Tax Credit Program Rules, shall promulgate rules establishing criteria upon which the eligibility statements will be issued. The eligibility statement shall specify the amount of Oklahoma Affordable Housing Tax Credits allocated to a qualified

project. The Oklahoma Housing Finance Agency shall only authorize the tax credits created by this section to qualified projects which are placed in service after July 1, 2015, but which shall not be used to reduce tax liability accruing prior to January 1, 2016;

3. "Federal low-income housing tax credit" means the federal tax credit as provided in Section 42 of the Internal Revenue Code of 1986, as amended;

4. "Oklahoma Affordable Housing Tax Credit" means the tax credit created by this section;

5. "Qualified project" means a qualified low-income building as that term is defined in Section 42 of the Internal Revenue Code of 1986, as amended, which is located in this state in a county with a population of less than one hundred fifty thousand (150,000) according to the latest Federal Decennial Census; and

6. "Taxpayer" means a person, firm or corporation subject to the tax imposed by Section 2355 of ~~Title 68 of the Oklahoma Statutes~~ this title or an insurance company subject to the tax imposed by Section 624 or 628 of Title 36 of the Oklahoma Statutes or other financial institution subject to the tax imposed by Section 2370 of ~~Title 68 of the Oklahoma Statutes~~ this title.

C. For qualified projects placed in service after July 1, 2015, the amount of state tax credits created by this section which are allocated to a project shall be equal to that of the federal low-income housing tax credits for a qualified project. The total

Oklahoma Affordable Housing Tax Credits allocated to all qualified projects for an allocation year shall not exceed Four Million Dollars ($4,000,000.00). For purposes of this section, the "credit period" shall mean the period of ten (10) taxable years and "placed in service" shall have the same meaning as is applicable under the federal credit program.

D. ~~A~~ Except as otherwise provided in subsection L of this section, a taxpayer owning an interest in an investment in a qualified project shall be allowed Oklahoma Affordable Housing Tax Credits under this section for tax years beginning on or after January 1, 2016, if the Oklahoma Housing Finance Agency issues an eligibility statement for such project, which tax credit shall be allocated among some or all of the partners, members or shareholders of the taxpayer owning such interest in any manner agreed to by such partners, members or shareholders. Such taxpayer may assign its interest in the investment.

E. An insurance company claiming a credit against state premium tax or retaliatory tax or any other tax imposed by Section 624 or 628 of Title 36 of the Oklahoma Statutes shall not be required to pay any additional retaliatory tax under Section 628 of Title 36 of the Oklahoma Statutes as a result of claiming the credit. The credit may fully offset any retaliatory tax imposed by Section 628 of Title 36 of the Oklahoma Statutes.

F. The credit authorized by this section shall not be used to reduce the tax liability of the taxpayer to less than zero ($0.00).

G. Any credit claimed but not used in a taxable year may be carried forward to each of the five (5) subsequent taxable years.

H. The owner of a qualified project eligible for the credit authorized by this section shall submit, at the time of filing the tax return with the Oklahoma Tax Commission, an eligibility statement from the Oklahoma Housing Finance Agency. In the case of failure to attach the eligibility statement, no credit under this section shall be allowed with respect to such project for that year until required documents are provided to the Tax Commission.

I. If under Section 42 of the Internal Revenue Code of 1986, as amended, a portion of any federal low-income housing credits taken on a qualified project is required to be recaptured during the first ten (10) years after a project is placed in service, the taxpayer claiming Oklahoma Affordable Housing Tax Credits with respect to such project shall also be required to recapture a portion of such credits. The amount of Oklahoma Affordable Housing Tax Credits subject to recapture shall be proportionally equal to the amount of federal low-income housing credits subject to recapture.

J. The Oklahoma Housing Finance Agency or the Oklahoma Tax Commission may require the filing of additional documentation necessary to determine the accuracy of a tax credit claimed.

K. The Oklahoma Affordable Housing Act shall undergo a review every five (5) years by a committee of nine (9) persons, to be appointed three persons each by the Governor, President Pro Tempore of the Oklahoma State Senate and the Speaker of the Oklahoma House of Representatives.

L. No credit shall be allowed pursuant to subsection C of this section for investments made on or after January 1, 2018 unless this section is reauthorized by the Oklahoma Legislature after evaluation by the Incentive Evaluation Commission pursuant to Section 7004 of Title 62 of the Oklahoma Statutes.

SECTION 8. This act shall become effective November 1, 2016.

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