OKLAHOMA TAX COMMISSION

FISCAL IMPACT STATEMENT AND/OR ADMINISTRATIVE IMPACT STATEMENT
SECOND REGULAR SESSION, FIFTY-FIFTH OKLAHOMA LEGISLATURE

DATE OF IMPACT STATEMENT: February 4, 2016

BILL NUMBER: SB 1137 **STATUS AND DATE OF BILL:** Introduced 1/19/16

AUTHORS: House n/a Senate Brecheen

TAX TYPE (S): Income Tax **SUBJECT:** Credit

PROPOSAL: Amendatory

SB 1137 proposes to amend various tax credits by not allowing them on or after January 1, 2018 unless the Oklahoma Legislature reauthorizes the credit after evaluation by the Incentive Evaluation Commission pursuant to O.S. 62 § 7004.

EFFECTIVE DATE: November 1, 2016

REVENUE IMPACT:

Insert dollar amount (plus or minus) of the expected change in state revenues due to this proposed legislation.

FY 17: -0-
FY 18: -0-

ADMINISTRATIVE IMPACT:

Insert the estimated cost or savings to the Tax Commission due to this proposed legislation.

FY 17: -0-

Feb. 6, 2016 — Rick Miller — mck
DATE — DIVISION DIRECTOR

2-6-16 — Reece Womack
DATE — REECE WOMACK, ECONOMIST

2/6/16 — Dawn Cash
DATE — FOR THE COMMISSION

SB 1137 proposes to amend various tax credits by not allowing them on or after January 1, 2018 unless the Oklahoma Legislature reauthorizes the credit after evaluation by the Incentive Evaluation Commission pursuant to O.S. 62 § 7004.

Section 1 –Investment / New Jobs Income Tax Credit

Section 1 proposes to amend 68 O.S. § 2357.4 which relates to the Investment / New Jobs Income Tax Credit to not allow this credit for any investment or job creation occurring on or after January 1, 2018 unless the Oklahoma Legislature reauthorizes the credit after evaluation by the Incentive Evaluation Commission pursuant to O.S. 62 § 7004.

Under current law, manufacturers, entities engaged in aircraft maintenance and web search portal firms are eligible for a non-refundable income tax credit for either an investment in depreciable property or for the addition of full-time equivalent employees[1]. Generally the credit is one percent of the amount of investment in depreciable property or $500.00 per new job[2]. The credit is allowed for the tax year the investment is made or when the increase in jobs occurs and is also allowed in each of the four subsequent years if the level of new employees is maintained or the qualified property is not sold, disposed of or transferred. Any credit allowed but not used may be carried over in order to each of the four (4) years following the year of qualification and 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, any credit from qualified depreciable property placed in service on or after January 1, 2000, may be utilized in subsequent tax years after the initial twenty-year period.

There is no impact to income tax collections in FY17 or FY18 as a result of this measure. Preliminary Tax Year 2014 data suggest the Investment / New Jobs Income Tax Credit has significant amounts of unused carryover available to be used in future tax years. Should the legislature not reauthorize this credit as proposed in this measure there would not be any short term effect on income tax collections. There is a potential unknown positive effect on income tax credits in the future when the unused carryover credits have been exhausted.

Section 2 - Credit for Qualified Rehabilitation Expenditures

Section 2 proposes to amend 68 O.S. § 2357.41 which relates to the Credit for Qualified Rehabilitation Expenditures to not allow this credit for any activities occurring on or after January 1, 2018 unless the Oklahoma Legislature reauthorizes the credit after evaluation by the Incentive Evaluation Commission pursuant to O.S. 62 § 7004.

Under current law there is an income tax credit for qualified rehabilitation expenditures incurred with any certified historic structure. The credit is to be equal to the amount of the Federal rehabilitation investment credit allowed under the Internal Revenue Code, Sec. 47. Any credit allowed but not used will have a ten (10) year carryover provision following the qualified expenditures. The credit may be freely transferred, at any time during the five years following the year of qualification.

There is no impact to income tax collections in FY17 or FY18 as a result of this measure. In order to estimate the *potential* fiscal impact of this proposal, data from tax years 2008 through 2013 was analyzed[3]. An average of $2,110,000 was used to offset Oklahoma income tax annually. No change

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[1] Web Search Portal firms are only eligible for the investment component of this credit.
[2] Credits double if the entity is located in an enterprise zone or if the initial investment is in excess of $40 million.
[3] Preliminary Tax Year 2014 data suggests $2,201,000 of this credit was used to reduce tax with an additional $11,184,000 available to be carried over to future tax years.

to estimated tax or withholding is anticipated so the full impact ***could potentially occur*** in FY19 when tax year 2018 income tax returns are filed; should the legislature not reauthorize this credit.

Section 3 - Credit for Biomedical Research Contributions / Credit for Cancer Research Contributions

Section 3 proposes to amend 68 O.S. § 2357.45, which relates to the Credit for Biomedical Research Contributions and the Credit for Cancer Research Contributions. This measure proposes to not allow these credits for donations made on or after January 1, 2018 unless the Oklahoma Legislature reauthorizes the credit after evaluation by the Incentive Evaluation Commission pursuant to O.S. 62 § 7004.

Under current law, donations made to qualified independent biomedical research institutes or qualified cancer research institutes are eligible for a nonrefundable income tax credit.

There is no impact to income tax collections in FY17 or FY18 as a result of this measure. In order to estimate the *potential* fiscal impact of this proposal, data from tax years 2009[4] through 2013 was analyzed[5]. An average of $799,000 was used to offset Oklahoma income tax annually. No change to estimated tax or withholding is anticipated so the full impact ***could potentially occur*** in FY19 when tax year 2018 income tax returns are filed; should the legislature not reauthorize this credit.

Section 4 - Credit for the Construction of Energy Efficient Homes

Section 4 proposes to amend 68 O.S. § 2357.46 which relates to the Credit for the Construction of Energy Efficient Homes. This measure proposes to not allow this credit for expenditures made on or after January 1, 2018 unless the Oklahoma Legislature reauthorizes the credit after evaluation by the Incentive Evaluation Commission pursuant to O.S. 62 § 7004.

Under current law an income tax credit is allowed for the eligible expenses incurred by a contractor in the construction of energy efficient residential property of 2,000 square feet or less located in Oklahoma and which has been certified by a Residential Energy Services Network provider. Eligible expenses include any energy efficient heating or cooling system; insulation material or system designed to reduce the heat gain or loss; exterior windows, including skylights; exterior doors; and Energy Star program metal roofs. In no event may the credit exceed $4,000 for residential property certified at 40% or more above the 2003 International Energy Conservation Code (IECC), including any supplement, or exceed $2,000 for residential property certified at between 20% and 39% of the 2003 IECC, including any supplement. The credit may be carried over for four (4) succeeding taxable years. This credit is transferable.

There is no impact to income tax collections in FY17 or FY18 as a result of this measure. Preliminary Tax Year 2014 data suggest the Credit for the Construction of Energy Efficient Homes has significant amounts of unused carryover available to be used in future tax years. Should the legislature not reauthorize this credit as proposed in this measure there would not be any short term effect on income tax collections. There is a potential unknown positive effect on income tax credits in the future when the unused carryover credits have been exhausted.

Section 5 - Credit for Railroad Modernization

Section 5 proposes to amend 68 O.S. § 2357.104, which relates to Credit for Railroad

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[4] Data for the cancer component of the credit is from 2011 forward since that was the first year that portion of the credit was available.

[5] Preliminary Tax Year 2014 data suggests $869,000 of this credit was used to reduce tax with an additional $406,000 available to be carried over to future tax years.

Modernization. This measure proposes to not allow this credit for expenditures made on or after January 1, 2018 unless the Oklahoma Legislature reauthorizes the credit after evaluation by the Incentive Evaluation Commission pursuant to O.S. 62 § 7004.

Under current law an income tax credit is allowed for an eligible taxpayer's qualified railroad reconstruction or replacement expenditures. The tax credit is equal to fifty percent (50%) of an eligible taxpayer's qualified railroad reconstruction or replacement expenditures, but is limited to the product of Six Thousand Dollars ($6,000.00) 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, provided the taxpayer may only claim one third (1/3) of the credit in any one taxable period. The credit may be carried over for five (5) succeeding taxable years. This credit is transferable.

There is no impact to income tax collections in FY17 or FY18 as a result of this measure. In order to estimate the *potential* fiscal impact of this proposal, data from tax years 2008 through 2013 was analyzed[6]. An average of $956,000 was used to offset Oklahoma income tax annually. No change to estimated tax or withholding is anticipated so the full impact ***could potentially occur*** in FY19 when tax year 2018 income tax returns are filed; should the legislature not reauthorize this credit.

Section 6 - Credit for Contributions to a Scholarship-Granting Organization / Credit for Contributions to an Educational Improvement Grant Organization.

Section 6 proposes to amend 68 O.S. § 2357.206 which relates to the Credit for Contributions to a Scholarship-Granting Organization / Credit for Contributions to an Educational Improvement Grant Organization. This measure proposes to not allow this credit for tax years beginning on or after January 1, 2018 unless the Oklahoma Legislature reauthorizes the credit after evaluation by the Incentive Evaluation Commission pursuant to O.S. 62 § 7004.

Credit for Contributions to a Scholarship-Granting Organization

Under current law, an income tax credit is allowed for contributions to an eligible scholarship-granting organization. The credit is generally 50%[7] of the amount contributed, not to exceed $1,000 for an individual ($2,000 for a married filing joint return) or $100,000 for a legal business entity. Tax credits which are allocated to an individual(s) by a pass-through entity are limited based on the total credit limitation of the pass-through entity and not by $1,000 (or $2,000) limitation for individuals. A "scholarship-granting organization" means a nonprofit organization, registered with the Oklahoma Tax Commission, which distributes scholarships so an eligible student or an eligible special needs student, can attend an elementary or secondary private school. The credit may be carried over for three (3) succeeding taxable years.

Credit for Contributions to an Educational Improvement Grant Organization

Under current law, an income tax credit is allowed for contributions to an eligible educational improvement grant organization. The credit is generally 50%[9] of the amount contributed, not to exceed $1,000 for an individual ($2,000 for a married filing joint return) or $100,000 for a legal business entity. Tax credits which are allocated to an individual(s) by a pass-through entity are limited based on the total credit limitation of the pass-through entity and not by $1,000 (or $2,000) limitation for individuals.

An "educational improvement grant organization" means a nonprofit organization, registered with

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[6] Preliminary Tax Year 2014 data suggests $402,000 of this credit was used to reduce tax with an additional $443,000 available to be carried over to future tax years.

[7] Taxpayers who make an eligible contribution and make a written commitment to contribute the same amount for an additional year, the credit will be 75% of the amount of the contributions for each year.

the Oklahoma Tax Commission, which contributes at least 90% of its annual receipts as grants to eligible public schools for innovative educational programs. An innovative educational program is an advanced academic or academic improvement program that is not part of the regular coursework of a public school but enhances the curriculum or academic program of the school or provides early childhood education programs to students. The credit may be carried over for three (3) succeeding taxable years.

There is no impact to income tax collections in FY17 or FY18 as a result of this measure. These credits have a combined cap of $5 million per tax year. In order to estimate the *potential* fiscal impact of this proposal, preliminary data for tax year 2014 was analyzed. Based upon the preliminary data a total of $545,000[8] was used to offset Oklahoma income for tax year 2014. No change to estimated tax or withholding is anticipated so the full impact ***could potentially occur*** in FY19 when tax year 2018 income tax returns are filed; should the legislature not reauthorize this credit.

Section 7 - Oklahoma Affordable Housing Tax Credit..

Section 7 proposes to amend 68 O.S. § 2357.403, which relates to the Oklahoma Affordable Housing Tax Credit. This measure proposes to not allow this credit for investments made on or after January 1, 2018 unless the Oklahoma Legislature reauthorizes the credit after evaluation by the Incentive Evaluation Commission pursuant to O.S. 62 § 7004.

Under current law there is a credit for qualified projects[9] placed in service after July 1, 2015. The amount of state tax credits available will equal the amount of federal low-income housing tax credits for a qualified project, but cannot exceed $4.0 million per allocation year[10]. For allocation year 2013, $8.7 million of federal low-income housing tax credits were awarded for Oklahoma projects.[11]

A taxpayer owning an interest in an investment in a qualified project shall be allowed a state tax credit if the Oklahoma Housing Finance Agency issues an eligibility statement for that project. The tax credit may be allocated among some or all of the partners, members or shareholders of the taxpayer in any manner agreed to by such persons. The taxpayer may assign its interest in the investment.

The tax credit is nonrefundable; any unused credit may be carried forward for a period of five (5) years. The credit cannot be used to reduce a tax liability accruing prior to January 1, 2016.

There is no impact to income tax collections in FY17 or FY18 as a result of this measure. The first tax year credits could be claimed is 2016 upon the filing of tax returns which are due in 2017. There is an annual $4.0 million cap which essentially doubles every year. No change to estimated tax or withholding is anticipated so any full impact ***could potentially occur*** in FY19 when tax year 2018 income tax returns are filed; should the legislature not reauthorize this credit.

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[8] Preliminary Tax Year 2014 data suggests $545,000 of these credits were used to reduce tax, with $238,000 of unused credits available for carryover to subsequent tax years.

[9] "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;

[10] The federal credits are claimed in equal amounts over a 10 year period. The state credit mirrors the federal credit. As a result, the estimated impact for the first year is a $4.0 million decrease in revenue for tax year 2016; for year 2 (tax year 2017), the estimated impact is $8.0 million, etc.

[11] http://www.novoco.com/low_income_housing/lihtc/federal_lihtc.php