

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

COMMITTEE SUBSTITUTE
FOR

SENATE BILL NO. 1068

By: McCortney

COMMITTEE SUBSTITUTE

An Act relating to income tax; amending 68 O.S. 2011, Section 2357.4, as last amended by Section 1, Chapter 329, O.S.L. 2016 (68 O.S. Supp. 2017, Section 2357.4), which relates to credits for qualified investment in property or new jobs; modifying dollar threshold for qualified investment in certain property and wages or salary used in certain calculation; modifying carryforward allowed for unused credit for specified time periods; conforming references; 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 last amended by Section 1, Chapter 329, O.S.L. 2016 (68 O.S. Supp. 2017, 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 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 1. Investment in qualified depreciable property placed in
2 service during those years for use in a manufacturing operation, as
3 defined in Section 1352 of this title, which has received a
4 manufacturer exemption permit pursuant to the provisions of Section
5 1359.2 of this title or a qualified aircraft maintenance or
6 manufacturing facility as defined in Section 1357 of this title in
7 this state or a qualified web search portal as defined in Section
8 1357 of this title; or

9 2. A net increase in the number of full-time-equivalent
10 employees in a manufacturing operation, as defined in Section 1352
11 of this title, which has received a manufacturer exemption permit
12 pursuant to the provisions of Section 1359.2 of this title or a
13 qualified aircraft maintenance or manufacturing facility defined in
14 Section 1357 of this title in this state or in a qualified web
15 search portal as defined in Section 1357 of this title including
16 employees engaged in support services.

17 B. Except as otherwise provided in subsection F of Section 3658
18 of this title and in subsections J and K of this section, for
19 taxable years beginning after December 31, 1998, there shall be
20 allowed a credit against the tax imposed by Section 2355 of this
21 title for:

22 1. Investment in qualified depreciable property with a total
23 cost equal to or greater than Forty Million Dollars (\$40,000,000.00)
24 within three (3) years from the date of initial qualifying

1 expenditure and placed in service in this state during those years
2 for use in the manufacture of products described by any Industry
3 Number contained in Division D of Part I of the Standard Industrial
4 Classification (SIC) Manual, latest revision; or

5 2. A net increase in the number of full-time-equivalent
6 employees in this state engaged in the manufacture of any goods
7 identified by any Industry Number contained in Division D of Part I
8 of the Standard Industrial Classification (SIC) Manual, latest
9 revision, if the total cost of qualified depreciable property placed
10 in service by the business entity within the state equals or exceeds
11 Forty Million Dollars (\$40,000,000.00) within three (3) years from
12 the date of initial qualifying expenditure.

13 C. The business entity may claim the credit authorized by
14 subsection B of this section for expenditures incurred or for a net
15 increase in the number of full-time-equivalent employees after the
16 business entity provides proof satisfactory to the Oklahoma Tax
17 Commission that the conditions imposed pursuant to paragraph 1 or
18 paragraph 2 of subsection B of this section have been satisfied.

19 D. If a business entity fails to expend the amount required by
20 paragraph 1 or paragraph 2 of subsection B of this section within
21 the time required, the business entity may not claim the credit
22 authorized by subsection B of this section but shall be allowed to
23 claim a credit pursuant to subsection A of this section if the
24 requirements of subsection A of this section are met with respect to

1 the investment in qualified depreciable property or net increase in
2 the number of full-time-equivalent employees.

3 E. The credit provided for in subsection A of this section, if
4 based upon investment in qualified depreciable property, shall not
5 be allowed unless the investment in qualified depreciable property
6 is at least ~~Fifty Thousand Dollars (\$50,000.00)~~ One Hundred Fifty
7 Thousand Dollars (\$150,000.00). The credit provided for in
8 subsection A or B of this section shall not be allowed if the
9 applicable investment is the direct cause of a decrease in the
10 number of full-time-equivalent employees. Qualified property shall
11 be limited to machinery, fixtures, equipment, buildings or
12 substantial improvements thereto, placed in service in this state
13 during the taxable year. The taxable years for which the credit may
14 be allowed if based upon investment in qualified depreciable
15 property shall be measured from the year in which the qualified
16 property is placed in service. If the credit provided for in
17 subsection A or B of this section is calculated on the basis of the
18 cost of the qualified property, the credit shall be allowed in each
19 of the four (4) subsequent years. If the qualified property on
20 which a credit has previously been allowed is acquired from a
21 related party, the date such property is placed in service by the
22 transferor shall be considered to be the date such property is
23 placed in service by the transferee, for purposes of determining the
24 aggregate number of years for which credit may be allowed.

1 F. The credit provided for in subsection A or B of this
2 section, if based upon an increase in the number of full-time-
3 equivalent employees, shall be allowed in each of the four (4)
4 subsequent years only if the level of new employees is maintained in
5 the subsequent year. In calculating the credit by the number of new
6 employees, only those employees whose paid wages or salary were at
7 least ~~Seven Thousand Dollars (\$7,000.00)~~ Thirty-three Thousand Five
8 Hundred Dollars (\$33,500.00) during each year the credit is claimed
9 shall be included in the calculation. Provided, that the first year
10 a credit is claimed for a new employee, such employee may be
11 included in the calculation notwithstanding paid wages of less than
12 ~~Seven Thousand Dollars (\$7,000.00)~~ Thirty-three Thousand Five
13 Hundred Dollars (\$33,500.00) if the employee was hired in the last
14 three quarters of the tax year, has wages or salary which will
15 result in annual paid wages in excess of ~~Seven Thousand Dollars~~
16 ~~(\$7,000.00)~~ Thirty-three Thousand Five Hundred Dollars (\$33,500.00)
17 and the taxpayer submits an affidavit stating that the employee's
18 position will be retained in the following tax year and will result
19 in the payment of wages in excess of ~~Seven Thousand Dollars~~
20 ~~(\$7,000.00)~~ Thirty-three Thousand Five Hundred Dollars (\$33,500.00).
21 The number of new employees shall be determined by comparing the
22 monthly average number of full-time employees subject to Oklahoma
23 income tax withholding for the final quarter of the taxable year
24 with the corresponding period of the prior taxable year, as

1 substantiated by such reports as may be required by the Tax
2 Commission.

3 G. The credit allowed by subsection A of this section shall be
4 the greater amount of either:

5 1. One percent (1%) of the cost of the qualified property in
6 the year the property is placed in service; or

7 2. Five Hundred Dollars (\$500.00) for each new employee. No
8 credit shall be allowed in any taxable year for a net increase in
9 the number of full-time-equivalent employees if such increase is a
10 result of an investment in qualified depreciable property for which
11 an income tax credit has been allowed as authorized by this section.

12 H. The credit allowed by subsection B of this section shall be
13 the greater amount of either:

14 1. Two percent (2%) of the cost of the qualified property in
15 the year the property is placed in service; or

16 2. One Thousand Dollars (\$1,000.00) for each new employee.

17 No credit shall be allowed in any taxable year for a net
18 increase in the number of full-time-equivalent employees if such
19 increase is a result of an investment in qualified depreciable
20 property for which an income tax credit has been allowed as
21 authorized by this section.

22 I. Except as provided by subsection G of Section 3658 of this
23 title, any credits allowed but not used in any taxable year may be
24 carried over in order as follows:

1. For any taxable year ending on or before December 31, 2017:

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

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

~~3.~~ c. 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;

~~4.~~ d. 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~~+~~l and

~~5.~~ e. Provided, for tax years beginning on or after January 1, 2016, and ending on or before December 31, 2018, the amount of credits available as an offset in a taxable year shall be limited to the percentage

1 calculated by the Tax Commission pursuant to the
2 provisions of subsection L of this section; and

3 2. For any taxable year beginning on or after January 1, 2018:

4 a. for credits based on investment in qualified
5 depreciable property pursuant to paragraph 1 of
6 subsection A of this section or paragraph 1 of
7 subsection B of this section, to each of the five (5)
8 years following the year of qualification, and

9 b. for credits based on a net increase in employment
10 pursuant to paragraph 2 of subsection A of this
11 section or paragraph 2 of subsection B of this
12 section, to each of the ten (10) years following the
13 year of qualification.

14 J. No credit otherwise authorized by the provisions of this
15 section may be claimed for any event, transaction, investment,
16 expenditure or other act occurring on or after July 1, 2010, for
17 which the credit would otherwise be allowable until the provisions
18 of this subsection shall cease to be operative on July 1, 2012.
19 Beginning July 1, 2012, the credit authorized by this section may be
20 claimed for any event, transaction, investment, expenditure or other
21 act occurring on or after July 1, 2010, according to the provisions
22 of this section; provided, credits accrued during the period from
23 July 1, 2010, through June 30, 2012, shall be limited to a period of
24 two (2) taxable years. The credit shall be limited in each taxable

1 year to fifty percent (50%) of the total amount of the accrued
2 credit. Any tax credits which accrue during the period of July 1,
3 2010, through June 30, 2012, may not be claimed for any period prior
4 to the taxable year beginning January 1, 2012. No credits which
5 accrue during the period of July 1, 2010, through June 30, 2012, may
6 be used to file an amended tax return for any taxable year prior to
7 the taxable year beginning January 1, 2012.

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

14 L. For tax years beginning on or after January 1, 2016, and
15 ending on or before December 31, 2018, the total amount of credits
16 authorized by this section used to offset tax shall be adjusted
17 annually to limit the annual amount of credits to Twenty-five
18 Million Dollars (\$25,000,000.00). The Tax Commission shall annually
19 calculate and publish a percentage by which the credits authorized
20 by this section shall be reduced so the total amount of credits used
21 to offset tax does not exceed Twenty-five Million Dollars
22 (\$25,000,000.00) per year. The formula to be used for the
23 percentage adjustment shall be Twenty-five Million Dollars
24

1 (\$25,000,000.00) divided by the credits used to offset tax in the
2 second preceding year.

3 M. Pursuant to subsection L of this section, in the event the
4 total tax credits authorized by this section exceed Twenty-five
5 Million Dollars (\$25,000,000.00) in any calendar year, the Tax
6 Commission shall permit any excess over Twenty-five Million Dollars
7 (\$25,000,000.00) but shall factor such excess into the percentage
8 adjustment formula for subsequent years.

9 SECTION 2. This act shall become effective November 1, 2018.

10
11 56-2-3353 JCR 2/14/2018 8:26:16 AM
12
13
14
15
16
17
18
19
20
21
22
23
24