(2ND EXTRAORDINARY SESSION)
ENGROSSED HOUSE
BILL NO. 1036

By: Wallace and Casey of the House

and

David and Fields of the Senate

An Act relating to revenue and taxation; amending 68 O.S. 2011, Section 2357.104, as amended by Section 1, Chapter 325, O.S.L. 2016 (68 O.S. Supp. 2017, Section 2357.104), which relates to income tax credits for railroad reconstruction expenditures; imposing cap; prescribing formula for computation of cap amount; providing for certain carryover amounts; and providing an effective date.

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

SECTION 1. AMENDATORY 68 O.S. 2011, Section 2357.104, as amended by Section 1, Chapter 325, O.S.L. 2016 (68 O.S. Supp. 2017, Section 2357.104), is amended to read as follows:

Section 2357.104 A. Except as otherwise provided by ~~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. The credit otherwise authorized by the provisions of this section shall be reduced by twenty-five percent (25%) for any taxable year which begins on or after January 1, 2016. The provisions of this subsection shall not be applicable to tax credits carried forward from any tax year which began prior to January 1, 2016.

I. For tax years beginning on or after January 1, 2018, the total amount of credits authorized by this section used to offset tax shall be adjusted annually to limit the annual amount of credits to Two Million Dollars ($2,000,000.00). The Tax Commission shall annually calculate and publish a percentage by which the credits authorized by this section shall be reduced so the total amount of credits used to offset tax does not exceed Two Million Dollars ($2,000,000.00) per year. The formula to be used for the percentage adjustment shall be Two Million Dollars ($2,000,000.00) divided by the credits claimed in the second preceding year.

J. Pursuant to subsection I of this section, in the event the total tax credits authorized by this section exceed Two Million Dollars ($2,000,000.00) in any calendar year, the Tax Commission shall permit any excess over Two Million Dollars ($2,000,000.00) but shall factor such excess into the percentage adjustment formula for subsequent years.

SECTION 2. This act shall become effective January 1, 2018.

Passed the House of Representatives the 26th day of February, 2018.

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Presiding Officer of the House of Representatives

Passed the Senate the ___ day of __________, 2018.

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Presiding Officer of the Senate