

1 STATE OF OKLAHOMA

2 2nd Session of the 56th Legislature (2018)

3 SENATE BILL 1068

By: McCortney

6 AS INTRODUCED

7 An Act relating to income tax; amending 68 O.S. 2011,
8 Section 2357.4, as last amended by Section 1, Chapter
329, O.S.L. 2016 (68 O.S. Supp. 2017, Section
9 2357.4), which relates to credits for qualified
investment in property or new jobs; modifying carry
10 forward allowed for unused credit for specified time
periods; conforming references; and providing an
11 effective date.

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

14 SECTION 1. AMENDATORY 68 O.S. 2011, Section 2357.4, as
15 last amended by Section 1, Chapter 329, O.S.L. 2016 (68 O.S. Supp.
16 2017, Section 2357.4), is amended to read as follows:

17 Section 2357.4. A. Except as otherwise provided in subsection
18 F of Section 3658 of this title and in subsections J and K of this
19 section, for taxable years beginning after December 31, 1987, there
20 shall be allowed a credit against the tax imposed by Section 2355 of
21 this title for:

22 1. Investment in qualified depreciable property placed in
23 service during those years for use in a manufacturing operation, as
24 defined in Section 1352 of this title, which has received a

1 manufacturer exemption permit pursuant to the provisions of Section
2 1359.2 of this title or a qualified aircraft maintenance or
3 manufacturing facility as defined in Section 1357 of this title in
4 this state or a qualified web search portal as defined in Section
5 1357 of this title; or

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

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

19 1. Investment in qualified depreciable property with a total
20 cost equal to or greater than Forty Million Dollars (\$40,000,000.00)
21 within three (3) years from the date of initial qualifying
22 expenditure and placed in service in this state during those years
23 for use in the manufacture of products described by any Industry
24

1 Number contained in Division D of Part I of the Standard Industrial
2 Classification (SIC) Manual, latest revision; or

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

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

17 D. If a business entity fails to expend the amount required by
18 paragraph 1 or paragraph 2 of subsection B of this section within
19 the time required, the business entity may not claim the credit
20 authorized by subsection B of this section but shall be allowed to
21 claim a credit pursuant to subsection A of this section if the
22 requirements of subsection A of this section are met with respect to
23 the investment in qualified depreciable property or net increase in
24 the number of full-time-equivalent employees.

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

22 F. The credit provided for in subsection A or B of this
23 section, if based upon an increase in the number of full-time-
24 equivalent employees, shall be allowed in each of the four (4)

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

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

22 1. One percent (1%) of the cost of the qualified property in
23 the year the property is placed in service; or
24

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

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

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

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

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

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

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

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

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

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

9 ~~4.~~ d. To the extent not used in paragraphs 1 and 2 of this
10 subsection, such credits from qualified depreciable
11 property placed in service on or after January 1,
12 2000, may be utilized in any subsequent tax years
13 after the initial twenty-year period~~7,~~ and

14 ~~5.~~ e. Provided, for tax years beginning on or after January
15 1, 2016, and ending on or before December 31, 2018,
16 the amount of credits available as an offset in a
17 taxable year shall be limited to the percentage
18 calculated by the Tax Commission pursuant to the
19 provisions of subsection L of this section; and

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

21 a. for credits based on investment in qualified
22 depreciable property pursuant to paragraph 1 of
23 subsection A of this section or paragraph 1 of
24

1 subsection B of this section, to each of the five (5)
2 years following the year of qualification, and
3 b. for credits based on a net increase in employment
4 pursuant to paragraph 2 of subsection A of this
5 section or paragraph 2 of subsection B of this
6 section, to each of the ten (10) years following the
7 year of qualification.

8 J. No credit otherwise authorized by the provisions of this
9 section may be claimed for any event, transaction, investment,
10 expenditure or other act occurring on or after July 1, 2010, for
11 which the credit would otherwise be allowable until the provisions
12 of this subsection shall cease to be operative on July 1, 2012.
13 Beginning July 1, 2012, the credit authorized by this section may be
14 claimed for any event, transaction, investment, expenditure or other
15 act occurring on or after July 1, 2010, according to the provisions
16 of this section; provided, credits accrued during the period from
17 July 1, 2010, through June 30, 2012, shall be limited to a period of
18 two (2) taxable years. The credit shall be limited in each taxable
19 year to fifty percent (50%) of the total amount of the accrued
20 credit. Any tax credits which accrue during the period of July 1,
21 2010, through June 30, 2012, may not be claimed for any period prior
22 to the taxable year beginning January 1, 2012. No credits which
23 accrue during the period of July 1, 2010, through June 30, 2012, may
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1 be used to file an amended tax return for any taxable year prior to
2 the taxable year beginning January 1, 2012.

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

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

21 M. Pursuant to subsection L of this section, in the event the
22 total tax credits authorized by this section exceed Twenty-five
23 Million Dollars (\$25,000,000.00) in any calendar year, the Tax
24 Commission shall permit any excess over Twenty-five Million Dollars

1 (\$25,000,000.00) but shall factor such excess into the percentage
2 adjustment formula for subsequent years.

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