

STATE OF OKLAHOMA

2nd Session of the 57th Legislature (2020)

SENATE BILL 1288

By: Bergstrom

AS INTRODUCED

An Act relating to income tax; amending 68 O.S. 2011, Section 2357.104, as last amended by Section 1, Chapter 7, 2nd Extraordinary Session, O.S.L. 2018 (68 O.S. Supp. 2019, Section 2357.104), which relates to tax credits for railroad reconstruction or replacement expenditures; deleting obsolete language; limiting transferability of credit to specified time period; limiting carry forward of unused credits to specified time period; authorizing refund of certain credits under specified circumstances and setting amount of refund; specifying entities to whom credit may be refunded and related procedures; exempting certain refund amounts from income tax; authorizing allocation of refund under certain circumstances and limiting amount; defining term; providing exception to certain reduction in value of credits; conforming language; 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 last amended by Section 1, Chapter 7, 2nd Extraordinary Session, O.S.L. 2018 (68 O.S. Supp. 2019, Section 2357.104), is amended to read as follows:

Section 2357.104. A. Except as otherwise provided by this section, for taxable years beginning after December 31, 2005, there

1 shall be allowed a credit against the tax imposed by Section 2355 of
2 this title equal to fifty percent (50%) of an eligible taxpayer's
3 qualified railroad reconstruction or replacement expenditures.

4 B. 1. Except as provided in paragraph 2 of this subsection,
5 the amount of the credit shall be limited to the product of ~~Five~~
6 ~~Hundred Dollars (\$500.00) for tax year 2007 and Two Thousand Dollars~~
7 ~~(\$2,000.00) for tax year 2008 and subsequent tax years~~ and the
8 number of miles of railroad track owned or leased within this state
9 by the eligible taxpayer as of the close of the taxable year.

10 2. ~~In tax year 2009 and subsequent tax years, a~~ A taxpayer may
11 elect to increase the limit provided in paragraph 1 of this
12 subsection to an amount equal to three times the limit specified in
13 paragraph 1 of this subsection for qualified expenditures made in
14 the tax year; provided, the taxpayer may only claim one-third (1/3)
15 of the credit in any one taxable period.

16 C. ~~The~~ For credits generated prior to January 1, 2021, the
17 credit allowed pursuant to subsection A of this section but not used
18 shall be freely transferable, by written agreement, to subsequent
19 transferees at any time during the five (5) years following the year
20 of qualification. An eligible transferee shall be any taxpayer
21 subject to the tax imposed by Section 2355 of this title. The
22 person originally allowed the credit and the subsequent transferee
23 shall jointly file a copy of the written credit transfer agreement
24 with the Oklahoma Tax Commission within thirty (30) days of the

1 transfer. The written agreement shall contain the name, address and
2 taxpayer identification number of the parties to the transfer, the
3 amount of credit being transferred, the year the credit was
4 originally allowed to the transferring person and the tax year or
5 years for which the credit may be claimed. The Tax Commission shall
6 promulgate rules to permit verification of the timeliness of a tax
7 credit claimed upon a tax return pursuant to this subsection but
8 shall not promulgate any rules which unduly restrict or hinder the
9 transfers of such tax credit. The Department of Transportation
10 shall promulgate rules to permit verification of the eligibility of
11 an eligible taxpayer's expenditures for the purpose of claiming the
12 credit. The rules shall provide for the approval of qualified
13 railroad reconstruction or replacement expenditures prior to
14 commencement of a project and provide a certificate of verification
15 upon completion of a project that uses qualified railroad
16 reconstruction or replacement expenditures. The certificate of
17 verification shall satisfy all requirements of the Tax Commission
18 pertaining to the eligibility of the person claiming the credit.

19 D. ~~Any~~ With respect to credits allowed pursuant to the
20 provisions of subsection A of this section earned prior to January
21 1, 2021, but not used in any tax year, such credits may be carried
22 over in order to each of the five (5) years following the year of
23 qualification.

1 E. For credits generated, but not used, on or after January 1,
2 2021, the Oklahoma Tax Commission shall refund, at the taxpayer's
3 election, directly to the taxpayer seventy-five percent (75%) of the
4 face amount of such credits. The direct refund of the credits
5 pursuant to this paragraph shall be available to all taxpayers,
6 including, without limitation, pass-through entities and taxpayers
7 subject to Section 2355 of this title. The amount of any direct
8 refund of credits actually received at the seventy-five percent
9 (75%) level by the taxpayer pursuant to this paragraph shall not be
10 subject to the tax imposed by Section 2355 or 2355.1P-4 of this
11 title. If the pass-through entity has not filed an election
12 pursuant to Section 2355.1P-4 and does not file a claim for a direct
13 refund, the pass-through entity shall allocate the credit to one or
14 more of the shareholders, partners or members of the pass-through
15 entity; provided, the total of all credits refunded or allocated
16 shall not exceed the amount of the credit or refund to which the
17 pass-through entity is entitled. For the purposes of this
18 paragraph, "pass-through entity" means a corporation that for the
19 applicable tax year is treated as an S corporation under the
20 Internal Revenue Code of 1986, as amended, general partnership,
21 limited partnership, limited liability partnership, trust or limited
22 liability company that for the applicable tax year is not taxed as a
23 corporation for federal income tax purposes.
24

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

5 ~~F.~~ G. As used in this section:

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

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

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

13 a. reconstruction or replacement of railroad
14 infrastructure including track, roadbed, bridges,
15 industrial leads and track-related structures owned or
16 leased by a Class II or Class III railroad as of
17 January 1, 2006, or

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

21 ~~G. No credit otherwise authorized by the provisions of this~~
22 ~~section may be claimed for any event, transaction, investment,~~
23 ~~expenditure or other act occurring on or after July 1, 2010, for~~
24 ~~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 or amounts refunded pursuant to subsection E of this section.

I. For tax years beginning on or after January 1, 2018, the total amount of credits authorized by this section used to offset tax or refunded 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 or refunded 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

1 Dollars (\$2,000,000.00) in any calendar year, the Tax Commission
2 shall permit any excess over Two Million Dollars (\$2,000,000.00) but
3 shall factor such excess into the percentage adjustment formula for
4 subsequent years.

5 SECTION 2. This act shall become effective November 1, 2020.

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