

STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

SENATE BILL 426

By: Bice

AS INTRODUCED

An Act relating to income tax credits; amending 68 O.S. 2011, Section 2357.4, as last amended by Section 1, Chapter 329, O.S.L. 2016 (68 O.S. Supp. 2018, Section 2357.4), which relates to credits for certain capital investment or job creation; conforming references; requiring manufacturing operation to meet certain average wage level; setting wage level requirement and methodology for calculating; modifying amount of credit which may be claimed after certain date; modifying time period for which credits may be claimed; conforming language; modifying minimum qualifying salary for new jobs used to claim credit after specified date; providing for recapture of credits claimed under specified circumstances; modifying term of carryforward for certain credits; deleting obsolete language; eliminating expiration date on cap of total credits allowed and conforming applicable language; defining term; requiring Oklahoma Tax Commission to collect specified data; providing an effective date; and declaring an emergency.

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. 2018, Section 2357.4), is amended to read as follows:

1 A. Except as otherwise provided in subsection F of Section 3658
2 of this title and in ~~subsections J and~~ subsection K of this section,
3 for taxable years beginning after December 31, 1987, there shall be
4 allowed a credit against the tax imposed by Section 2355 of this
5 title for:

6 1. Investment in qualified depreciable property placed in
7 service during those years for use in a manufacturing operation, as
8 defined in Section 1352 of this title, which has received a
9 manufacturer exemption permit pursuant to the provisions of Section
10 1359.2 of this title and which meets the average wage requirement
11 prescribed in this subsection or a qualified aircraft maintenance or
12 manufacturing facility as defined in Section 1357 of this title in
13 this state or a qualified web search portal as defined in Section
14 1357 of this title; or

15 2. A net increase in the number of full-time-equivalent
16 employees in a manufacturing operation, as defined in Section 1352
17 of this title, which has received a manufacturer exemption permit
18 pursuant to the provisions of Section 1359.2 of this title and which
19 meets the average wage requirement prescribed in this subsection or
20 a qualified aircraft maintenance or manufacturing facility defined
21 in Section 1357 of this title in this state or in a qualified web
22 search portal as defined in Section 1357 of this title including
23 employees engaged in support services.

1 In order to qualify for the credit established in paragraphs 1 and 2
2 of this subsection, a manufacturing operation applying for the
3 credit for the first time after the effective date of this act shall
4 only be allowed the credit if the average annualized wage of its
5 employees equals or exceeds three hundred percent (300%) of the
6 average county wage for the county in which the applicant is
7 located, as that percentage is determined by the Department of
8 Commerce based on the most recent U.S. Department of Commerce data.
9 For purposes of this section, health care premiums paid by the
10 applicant for individuals in new direct jobs shall not be included
11 in the annualized wage. Provided, no average wage requirement shall
12 exceed Ninety-four Thousand Dollars (\$94,000.00) in any county.
13 This maximum wage threshold shall be indexed and modified from time
14 to time based on the latest Consumer Price Index year-to-date
15 percent change release as of the date of the annual average county
16 wage data release from the Bureau of Economic Analysis of the U.S.
17 Department of Commerce.

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

23 1. Investment in qualified depreciable property with a total
24 cost equal to or greater than Forty Million Dollars (\$40,000,000.00)

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

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

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

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

1 requirements of subsection A of this section are met with respect to
2 the investment in qualified depreciable property or net increase in
3 the number of full-time-equivalent employees.

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

1 related party, the date such property is placed in service by the
2 transferor shall be considered to be the date such property is
3 placed in service by the transferee, for purposes of determining the
4 aggregate number of years for which credit may be allowed.

5 F. 1. The credit provided for in subsection A or B of this
6 section, if based upon an increase in the number of full-time-
7 equivalent employees, shall be allowed in each of the four (4)
8 subsequent years only if the level of new employees is maintained in
9 the subsequent year and if the employees are hired before the
10 effective date of this act. If the employees are hired on or after
11 the effective date of this act, the credit shall only be allowed for
12 the tax year during which the employees are hired. In calculating
13 the credit by the number of new employees, only those employees
14 whose paid wages or salary ~~were at least Seven Thousand Dollars~~
15 ~~(\$7,000.00)~~ meet the minimum salary requirements of paragraph 2 of
16 this subsection during each year the credit is claimed shall be
17 included in the calculation. Provided, that the first year a credit
18 is claimed for a new employee, such employee may be included in the
19 calculation notwithstanding paid wages ~~of less than Seven Thousand~~
20 ~~Dollars (\$7,000.00)~~ which do not meet the minimum requirements if
21 the employee was hired in the last three quarters of the tax year,
22 has wages or salary which will result in annual paid wages in excess
23 of ~~Seven Thousand Dollars (\$7,000.00)~~ the minimum salary
24 requirements and the taxpayer submits an affidavit stating that the

1 employee's position will be retained in the following tax year and
2 will result in the payment of wages in excess of ~~Seven Thousand~~
3 ~~Dollars (\$7,000.00)~~ the minimum salary requirements.

4 2. For an employee used in the calculation of the credit
5 provided for in this section, if the employee is hired before the
6 effective date of this act, a minimum salary requirement in excess
7 of annual paid wages of Seven Thousand Dollars (\$7,000.00) shall
8 apply. For an employee hired after the effective date of this act,
9 the employee may be used in the calculation of the credit provided
10 for in this section only if the employee's average annualized wage
11 equals or exceeds:

12 a. one hundred ten percent (110%) of the average county
13 wage as determined by the Department of Commerce based
14 on the most recent U.S. Department of Commerce data
15 for the county in which the new job is located. For
16 purposes of this paragraph, health care premiums paid
17 by the employer for an employee shall be included in
18 the annualized wage, or

19 b. one hundred percent (100%) of the average county wage
20 as that percentage is determined by the Department of
21 Commerce based upon the most recent U.S. Department of
22 Commerce data for the county in which the new job is
23 located. For purposes of this paragraph, health care

1 premiums paid by the employer for an employee shall
2 not be included in the annualized wage.

3 Provided, no average wage requirement shall exceed Twenty-five
4 Thousand Dollars (\$25,000.00), in any county. This maximum wage
5 threshold shall be indexed and modified from time to time based on
6 the latest Consumer Price Index year-to-date percent change release
7 as of the date of the annual average county wage data release from
8 the Bureau of Economic Analysis of the U.S. Department of Commerce.

9 3. The number of new employees shall be determined by comparing
10 the monthly average number of full-time employees subject to
11 Oklahoma income tax withholding for the final quarter of the taxable
12 year with the corresponding period of the prior taxable year, as
13 substantiated by such reports as may be required by the Tax
14 Commission.

15 G. ~~The~~ For credits claimed before the effective date of this
16 act, the credit allowed by subsection A of this section shall be the
17 greater amount of either:

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

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

1 H. The For credits claimed before the effective date of this
2 act, the credit allowed by subsection B of this section shall be the
3 greater amount of either:

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

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

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

12 I. For credits claimed on or after the effective date of this
13 act, the credit allowed by subsection A or B of this section shall
14 be the greater amount of either:

15 1. Four percent (4%) of the cost of the qualified property in
16 the year the property is placed in service; or

17 2. Two Thousand Dollars (\$2,000.00) for each new employee.

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

23 For any credit claimed pursuant to this section, if as a result
24 of an audit by the Oklahoma Tax Commission, it is determined that an

1 asset is sold or employment is terminated, applicable credits shall
2 be disallowed by the Tax Commission and the taxpayer shall repay the
3 amount.

4 J. Except as provided by subsection G of Section 3658 of this
5 title, any credits allowed before the effective date of this act but
6 not used in any taxable year may be carried over in order as
7 follows:

8 1. To each of the four (4) years following the year of
9 qualification;

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

12 3. If a C corporation that otherwise qualified for the credits
13 under subsection A of this section subsequently changes its
14 operating status to that of a pass-through entity which is being
15 treated as the same entity for federal tax purposes, the credits
16 will continue to be available as if the pass-through entity had
17 originally qualified for the credits subject to the limitations of
18 this section;

19 4. To the extent not used in paragraphs 1 and 2 of this
20 subsection, such credits from qualified depreciable property placed
21 in service on or after January 1, 2000, may be utilized in any
22 subsequent tax years after the initial twenty-year period; ~~and~~

23 5. Provided, for tax years beginning on or after January 1,
24 2016, ~~and ending on or before December 31, 2018,~~ the amount of
25

1 credits available as an offset in a taxable year shall be limited to
2 the percentage calculated by the Tax Commission pursuant to the
3 provisions of subsection L of this section.

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

22 6. Any credits claimed after the effective date of this act and
23 allowed but not used in any taxable year may be carried over in
24

1 order to each of the five (5) years following the year of
2 qualification.

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~~ claimed
20 in the 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 N. For purposes of this section, for credits claimed on or
4 after the effective date of this act, "investments in qualified
5 depreciable property" shall only include capital expenditures for
6 new or expanding facilities, excluding expenditures for capital
7 replacement.

8 O. The Oklahoma Tax Commission shall collect the following data
9 related to credits claimed pursuant to this section:

10 1. Baseline employment and payroll data for the initial year
11 the credit is claimed and for any subsequent years the credit is
12 claimed;

13 2. A description of specific capital investments upon which a
14 claim for credit is based; and

15 3. The numerical classification of any taxpayer claiming the
16 credit based on the North American Industrial Classification System.

17 SECTION 2. Subsections A through K, N and O shall become
18 effective January 1, 2020.

19 SECTION 3. It being immediately necessary for the preservation
20 of the public peace, health or safety, an emergency is hereby
21 declared to exist, by reason whereof this act shall take effect and
22 be in full force from and after its passage and approval.
23