

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4

February 24, 2021

SENATE BILL NO. 594

By: McCortney and Hall of the
Senate

and

Pfeiffer of the House

An Act relating to income tax credit; amending 68 O.S. 2011, Section 2357.4, as last amended by Section 1, Chapter 329, O.S.L. 2016 (68 O.S. Supp. 2020, Section 2357.4), which relates to tax credit for investments; deleting credit for increase of certain employees; increasing investment requirement in certain property; indexing investment requirement to certain measure of inflation; requiring the Oklahoma Department of Commerce to determine adjustment; modifying term for carryover of unused credit; modifying term of annual limit for credits used; providing annual limit for credit earned before certain year; clarifying statutory 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 2357.4, as last amended by Section 1, Chapter 329, O.S.L. 2016 (68 O.S. Supp. 2020, 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

1 shall be allowed a credit against the tax imposed by Section 2355 of
2 this title for:

3 ~~1. Investment~~ investment in qualified depreciable property
4 placed in service during those years for use in a manufacturing
5 operation, as defined in Section 1352 of this title, which has
6 received a manufacturer exemption permit pursuant to the provisions
7 of Section 1359.2 of this title or a qualified aircraft maintenance
8 or manufacturing facility as defined in Section 1357 of this title
9 in this state or a qualified web search portal as defined in Section
10 1357 of this title; ~~or~~

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

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

1 ~~1. Investment~~ investment in qualified depreciable property with
2 a total cost equal to or greater than Forty Million Dollars
3 (\$40,000,000.00) within three (3) years from the date of initial
4 qualifying expenditure and placed in service in this state during
5 those years for use in the manufacture of products described by any
6 Industry Number contained in Division D of Part I of the Standard
7 Industrial Classification (SIC) Manual, latest revision; ~~or~~

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

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

22 D. If a business entity fails to expend the amount required by
23 ~~paragraph 1 or paragraph 2 of~~ subsection B of this section within
24 the time required, the business entity may not claim the credit

1 authorized by subsection B of this section but shall be allowed to
2 claim a credit pursuant to subsection A of this section if the
3 requirements of subsection A of this section are met with respect to
4 the investment in qualified depreciable property ~~or net increase in~~
5 ~~the number of full-time-equivalent employees.~~

6 E. The credit provided for in subsection A of this section, ~~if~~
7 ~~based upon investment in qualified depreciable property,~~ shall not
8 be allowed unless the investment in qualified depreciable property
9 is at least ~~Fifty Thousand Dollars (\$50,000.00)~~ Five Hundred
10 Thousand Dollars (\$500,000.00) and, beginning January 1, 2023, the
11 investment required shall be increased annually by a percentage
12 equal to the previous year's increase in the national Consumer Price
13 Index (CPI). The Oklahoma Department of Commerce shall determine
14 the amount of the increase, if any, on January 1 of each year. The
15 credit provided for in subsection A or B of this section shall not
16 be allowed if the applicable investment is the direct cause of a
17 decrease in the number of full-time-equivalent employees. Qualified
18 property shall be limited to machinery, fixtures, equipment,
19 buildings or substantial improvements thereto, placed in service in
20 this state during the taxable year. The taxable years for which the
21 credit may be allowed ~~if based upon investment in qualified~~
22 ~~depreciable property~~ shall be measured from the year in which the
23 qualified property is placed in service. If the credit provided for
24 in subsection A or B of this section is calculated on the basis of

1 the cost of the qualified property, the credit shall be allowed in
2 each of the four (4) subsequent years. If the qualified property on
3 which a credit has previously been allowed is acquired from a
4 related party, the date such property is placed in service by the
5 transferor shall be considered to be the date such property is
6 placed in service by the transferee, for purposes of determining the
7 aggregate number of years for which credit may be allowed.

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

1 ~~determined by comparing the monthly average number of full-time~~
2 ~~employees subject to Oklahoma income tax withholding for the final~~
3 ~~quarter of the taxable year with the corresponding period of the~~
4 ~~prior taxable year, as substantiated by such reports as may be~~
5 ~~required by the Tax Commission.~~

6 ~~G.~~ The credit allowed by subsection A of this section shall be
7 ~~the greater amount of either:~~

8 ~~1. One percent (1%)~~ one percent (1%) of the cost of the
9 ~~qualified property~~ building property and the cost of substantial
10 improvements to building property, plus one-half of one percent
11 (0.5%) of the cost of qualified machinery, equipment or fixtures in
12 the year the ~~property~~ qualified building, machinery, equipment or
13 fixture is placed in service; ~~or~~

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

19 ~~H.~~ G. The credit allowed by subsection B of this section shall
20 ~~be the greater amount of either:~~

21 ~~1. Two percent (2%)~~ two percent (2%) of the cost of the
22 ~~qualified property~~ building property and the cost of substantial
23 improvements to building property, plus one percent (1%) of the cost
24 of qualified machinery, equipment or fixtures in the year the

1 ~~property~~ qualified building, machinery, equipment or fixture is
2 placed in service; ~~or~~

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

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

9 ~~I.~~ H. Except as provided by subsection G of Section 3658 of
10 this title, any credits allowed but not used in any taxable year may
11 be carried over in order as follows:

12 1. ~~To~~ For credits awarded before tax year 2022, to each of the
13 four (4) years following the year of qualification;

14 2. ~~To~~ For credits awarded before tax year 2022, to the extent
15 not used in those years in order to each of the fifteen (15) years
16 following the initial five-year period;

17 3. For credits awarded for tax year 2022 and subsequent tax
18 years, to each of the following five (5) years;

19 4. If a C corporation that otherwise qualified for the credits
20 under subsection A of this section subsequently changes its
21 operating status to that of a pass-through entity which is being
22 treated as the same entity for federal tax purposes, the credits
23 will continue to be available as if the pass-through entity had
24

1 originally qualified for the credits subject to the limitations of
2 this section;

3 ~~4.~~ 5. To the extent not used in paragraphs 1 and 2 of this
4 subsection, such credits from qualified depreciable property placed
5 in service on or after January 1, 2000, may be utilized in any
6 subsequent tax years after the initial twenty-year period; and

7 ~~5.~~ 6. Provided, for tax years ~~beginning on or after January 1,~~
8 ~~2016, and ending on or before December 31, 2018~~ 2016 through 2018
9 and tax year 2022 and subsequent tax years, the amount of credits
10 available as an offset in a taxable year shall be limited to the
11 percentage calculated by the Tax Commission pursuant to the
12 provisions of subsection ~~H~~ K of this section.

13 ~~F.~~ I. No credit otherwise authorized by the provisions of this
14 section may be claimed for any event, transaction, investment,
15 expenditure or other act occurring on or after July 1, 2010, for
16 which the credit would otherwise be allowable until the provisions
17 of this subsection shall cease to be operative on July 1, 2012.
18 Beginning July 1, 2012, the credit authorized by this section may be
19 claimed for any event, transaction, investment, expenditure or other
20 act occurring on or after July 1, 2010, according to the provisions
21 of this section; provided, credits accrued during the period from
22 July 1, 2010, through June 30, 2012, shall be limited to a period of
23 two (2) taxable years. The credit shall be limited in each taxable
24 year to fifty percent (50%) of the total amount of the accrued

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

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

13 ~~L.~~ K. For tax years ~~beginning on or after January 1, 2016, and~~
14 ~~ending on or before December 31, 2018~~ 2016 through 2018 and tax year
15 2022 and subsequent tax years, 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). Credits originating from
19 qualified property placed into service ten (10) years before the
20 current tax year shall be limited to no more than One Million
21 Dollars (\$1,000,000.00) of the Twenty-five Million Dollars
22 (\$25,000,000.00) annual limit. The Tax Commission shall annually
23 calculate and publish a percentage by which the credits authorized
24 by this section shall be reduced so the total amount of credits used

1 to offset tax does not exceed Twenty-five Million Dollars
2 (\$25,000,000.00) per year. The formula to be used for the
3 percentage adjustment shall be Twenty-five Million Dollars
4 (\$25,000,000.00) divided by the credits used to offset tax in the
5 second preceding year.

6 ~~M.~~ L. Pursuant to subsection ~~L~~ K of this section, in the event
7 the total tax credits authorized by this section exceed Twenty-five
8 Million Dollars (\$25,000,000.00) in any calendar year, the Tax
9 Commission shall permit any excess over Twenty-five Million Dollars
10 (\$25,000,000.00) but shall factor such excess into the percentage
11 adjustment formula for subsequent years.

12 SECTION 2. This act shall become effective November 1, 2021.

13 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS
14 February 24, 2021 - DO PASS
15
16
17
18
19
20
21
22
23
24