

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 SENATE BILL 594

By: Hall

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5  
6 AS INTRODUCED

7 An Act relating to income tax credit; amending 68  
8 O.S. 2011, Section 2357.4, as last amended by Section  
9 1, Chapter 329, O.S.L. 2016 (68 O.S. Supp. 2020,  
10 Section 2357.4), which relates to tax credit for  
11 investments; deleting credit for increase of certain  
12 employees; increasing investment requirement in  
13 certain property; indexing investment requirement to  
14 certain measure of inflation; requiring the Oklahoma  
15 Department of Commerce to determine adjustment;  
16 modifying term for carryover of unused credit;  
17 modifying term of annual limit for credits used;  
18 providing annual limit for credit earned before  
19 certain year; clarifying statutory language; and  
20 providing an effective date.

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

22 SECTION 1. AMENDATORY 68 O.S. 2011, Section 2357.4, as  
23 last amended by Section 1, Chapter 329, O.S.L. 2016 (68 O.S. Supp.  
24 2020, Section 2357.4), is amended to read as follows:

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

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

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

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

22       ~~1. Investment investment~~ investment in qualified depreciable property with  
23 a total cost equal to or greater than Forty Million Dollars  
24 (\$40,000,000.00) within three (3) years from the date of initial

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

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

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

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

1 the investment in qualified depreciable property ~~or net increase in~~  
2 ~~the number of full-time equivalent employees.~~

3 E. The credit provided for in subsection A of this section, ~~if~~  
4 ~~based upon investment in qualified depreciable property,~~ shall not  
5 be allowed unless the investment in qualified depreciable property  
6 is at least ~~Fifty Thousand Dollars (\$50,000.00)~~ Five Hundred  
7 Thousand Dollars (\$500,000.00) and, beginning January 1, 2023, the  
8 investment required shall be increased annually by a percentage  
9 equal to the previous year's increase in the national Consumer Price  
10 Index (CPI). The Oklahoma Department of Commerce shall determine  
11 the amount of the increase, if any, on January 1 of each year. The  
12 credit provided for in subsection A or B of this section shall not  
13 be allowed if the applicable investment is the direct cause of a  
14 decrease in the number of full-time-equivalent employees. Qualified  
15 property shall be limited to machinery, fixtures, equipment,  
16 buildings or substantial improvements thereto, placed in service in  
17 this state during the taxable year. The taxable years for which the  
18 credit may be allowed ~~if based upon investment in qualified~~  
19 ~~depreciable property~~ shall be measured from the year in which the  
20 qualified property is placed in service. If the credit provided for  
21 in subsection A or B of this section is calculated on the basis of  
22 the cost of the qualified property, the credit shall be allowed in  
23 each of the four (4) subsequent years. 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. 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. In calculating the credit by the number of new~~  
10 ~~employees, only those employees whose paid wages or salary were at~~  
11 ~~least Seven Thousand Dollars (\$7,000.00) during each year the credit~~  
12 ~~is claimed shall be included in the calculation. Provided, that the~~  
13 ~~first year a credit is claimed for a new employee, such employee may~~  
14 ~~be included in the calculation notwithstanding paid wages of less~~  
15 ~~than Seven Thousand Dollars (\$7,000.00) if the employee was hired in~~  
16 ~~the last three quarters of the tax year, has wages or salary which~~  
17 ~~will result in annual paid wages in excess of Seven Thousand Dollars~~  
18 ~~(\$7,000.00) and the taxpayer submits an affidavit stating that the~~  
19 ~~employee's position will be retained in the following tax year and~~  
20 ~~will result in the payment of wages in excess of Seven Thousand~~  
21 ~~Dollars (\$7,000.00). The number of new employees shall be~~  
22 ~~determined by comparing the monthly average number of full-time~~  
23 ~~employees subject to Oklahoma income tax withholding for the final~~  
24 ~~quarter of the taxable year with the corresponding period of the~~

1 ~~prior taxable year, as substantiated by such reports as may be~~  
2 ~~required by the Tax Commission.~~

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

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

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

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

18 ~~1. Two percent (2%)~~ two percent (2%) of the cost of the  
19 qualified building property and the cost of substantial improvements  
20 to building property, plus one percent (1%) of the cost of qualified  
21 machinery, equipment or fixtures ~~property~~ in the year the qualified  
22 building, machinery, equipment or fixture ~~property~~ is placed in  
23 service; ~~or~~

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

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

6       ~~F.~~ H. Except as provided by subsection G of Section 3658 of  
7 this title, any credits allowed but not used in any taxable year may  
8 be carried over in order as follows:

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

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

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

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

23       ~~4.~~ 5. To the extent not used in paragraphs 1 and 2 of this  
24 subsection, such credits from qualified depreciable property placed

1 in service on or after January 1, 2000, may be utilized in any  
2 subsequent tax years after the initial twenty-year period; and

3 ~~5. 6.~~ Provided, for tax years ~~beginning on or after January 1,~~  
4 ~~2016, and ending on or before December 31, 2018~~ 2016 through 2018  
5 and tax year 2022 and subsequent tax years, the amount of credits  
6 available as an offset in a taxable year shall be limited to the  
7 percentage calculated by the Tax Commission pursuant to the  
8 provisions of subsection ~~H~~ K of this section.

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



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. J.~~ 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. K.~~ For tax years ~~beginning on or after January 1, 2016, and~~  
10 ~~ending on or before December 31, 2018~~ 2016 through 2018 and tax year  
11 2022 and subsequent tax years, the total amount of credits  
12 authorized by this section used to offset tax shall be adjusted  
13 annually to limit the annual amount of credits to Twenty-five  
14 Million Dollars (\$25,000,000.00). Credits originating from  
15 qualified property placed into service ten (10) years before the  
16 current tax year shall be limited to no more than One Million  
17 Dollars (\$1,000,000.00) of the Twenty-five Million Dollars  
18 (\$25,000,000.00) annual limit. The Tax Commission shall annually  
19 calculate and publish a percentage by which the credits authorized  
20 by this section shall be reduced so the total amount of credits used  
21 to offset tax does not exceed Twenty-five Million Dollars  
22 (\$25,000,000.00) per year. The formula to be used for the  
23 percentage adjustment shall be Twenty-five Million Dollars  
24

1 (\$25,000,000.00) divided by the credits used to offset tax in the  
2 second preceding year.

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

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

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