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March 1, 2023

COMMITTEE SUBSTITUTE
FOR

SENATE BILL NO. 315

By: Rader and Bergstrom

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[ income tax credit - proof - carry forward - claim -
effective date ]
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BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 68 O.S. 2021, 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 shall be allowed a credit against the tax imposed by Section 2355 of this title for:

1. Investment in qualified depreciable property placed in service during those years for use in a manufacturing operation, as defined in Section 1352 of this title, which has received a manufacturer exemption permit pursuant to the provisions of Section 1359.2 of this title or a qualified aircraft maintenance or manufacturing facility as defined in Section 1357 of this title in

1 this state or a qualified web search portal as defined in Section
2 1357 of this title; or

3 2. A For tax years 1988 through 2023, a net increase in the
4 number of full-time-equivalent employees 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 defined in Section 1357 of this title in
9 this state or in a qualified web search portal as defined in Section
10 1357 of this title including employees engaged in support services.

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

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

23 2. A For tax years 1999 through 2023, a net increase in the
24 number of full-time-equivalent employees in this state engaged in

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

8 C. ~~The~~ For tax years 1999 through 2023, the business entity may
9 claim the credit authorized by subsection B of this section for
10 expenditures incurred or for a net increase in the number of full-
11 time-equivalent employees after the business entity provides proof
12 satisfactory to the Oklahoma Tax Commission that the conditions
13 imposed pursuant to paragraph 1 or paragraph 2 of subsection B of
14 this section have been satisfied.

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

23 E. The credit provided for in subsection A of this section, if
24 based upon investment in qualified depreciable property, shall not

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

20 F. The credit provided for in subsection A or B of this
21 section, if based upon an increase in the number of full-time-
22 equivalent employees, shall be allowed in each of the four (4)
23 subsequent years only if the level of new employees is maintained in
24 the subsequent year. In calculating the credit by the number of new

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

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

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

22 2. Five Hundred Dollars (\$500.00) for each new employee. No
23 credit shall be allowed in any taxable year for a net increase in
24 the number of full-time-equivalent employees if such increase is a

1 result of an investment in qualified depreciable property for which
2 an income tax credit has been allowed as authorized by this section.

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

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

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

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

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

16 1. To each of the four (4) years following the year of
17 qualification;

18 2. ~~To~~ For credits allowed in tax years 2023 and before, to the
19 extent not used in those years in order to each of the fifteen (15)
20 years following the initial five-year period;

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

1 will continue to be available as if the pass-through entity had
2 originally qualified for the credits subject to the limitations of
3 this section;

4 4. To the extent not used in paragraphs 1 and 2 of this
5 subsection, such credits from qualified depreciable property placed
6 in service on or after January 1, 2000, and before January 1, 2024,
7 may be utilized in any subsequent tax years after the initial
8 twenty-year period; ~~and~~

9 5. To the extent not used in paragraph 1 of this subsection,
10 credits from qualified depreciable property placed in service on or
11 after January 1, 2024, may be carried forward in order to each of
12 the seven (7) years following the initial five-year period, upon the
13 filing of a claim on a form prescribed by the Tax Commission for
14 each year the credit is carried forward. The form prescribed shall
15 require the claimant to attest whether the property is still in use;
16 and

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

22 J. No credit otherwise authorized by the provisions of this
23 section may be claimed for any event, transaction, investment,
24 expenditure, or other act occurring on or after July 1, 2010, for

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

16 K. Beginning January 1, 2017, except with respect to tax
17 credits allowed from investment or job creation occurring prior to
18 January 1, 2017, the credits authorized by this section shall not be
19 allowed for investment or job creation in electric power generation
20 by means of wind as described by the North American Industry
21 Classification System, No. 221119.

22 L. For tax years beginning on or after January 1, 2016, and
23 ending on or before December 31, 2018, the total amount of credits
24 authorized by this section used to offset tax shall be adjusted

1 annually to limit the annual amount of credits to Twenty-five
2 Million Dollars (\$25,000,000.00). The Tax Commission shall annually
3 calculate and publish a percentage by which the credits authorized
4 by this section shall be reduced so the total amount of credits used
5 to offset tax does not exceed Twenty-five Million Dollars
6 (\$25,000,000.00) per year. The formula to be used for the
7 percentage adjustment shall be Twenty-five Million Dollars
8 (\$25,000,000.00) divided by the credits used to offset tax in the
9 second preceding year.

10 M. Pursuant to subsection L of this section, in the event the
11 total tax credits authorized by this section exceed Twenty-five
12 Million Dollars (\$25,000,000.00) in any calendar year, the Tax
13 Commission shall permit any excess over Twenty-five Million Dollars
14 (\$25,000,000.00) but shall factor such excess into the percentage
15 adjustment formula for subsequent years.

16 SECTION 2. This act shall become effective November 1, 2023.

17 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS
18 March 1, 2023 - DO PASS AS AMENDED BY CS
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