

STATE OF OKLAHOMA

2nd Session of the 59th Legislature (2024)

HOUSE BILL 3426

By: Archer

AS INTRODUCED

An Act relating to revenue and taxation; amending 68 O.S. 2021, Section 2357.42, which relates to income tax credits for qualified space transportation vehicle providers; modifying references to taxable years; modifying definitions; and providing an effective date.

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

SECTION 1. AMENDATORY 68 O.S. 2021, Section 2357.42, is amended to read as follows:

Section 2357.42 A. For tax years beginning after December 31, 2000, and ending before January 1, ~~2009~~ 2030, there shall be allowed to an investor making an eligible investment a credit against the tax imposed by Section 2355 or 2370 of this title or Section 624 or 628 of Title 36 of the Oklahoma Statutes. The credit may be used in the payment of estimated tax payments for the tax imposed by Section 624 or 628 of Title 36 of the Oklahoma Statutes. The credit shall be in the amount as set forth in subsection G of this section.

1 B. The amount of the credit shall be transferable to subsequent  
2 transferees.

3 C. As used in this section:

4 1. "Eligible investment" means an investment made during a  
5 period not earlier than January 1, 2001, and not later than December  
6 31, ~~2003~~ 2029, in a qualified space transportation vehicle provider  
7 that:

8 a. is headquartered in this state or is ultimately  
9 controlled by an entity headquartered in this state,  
10 or

11 b. has been certified by the Oklahoma Tax Commission as  
12 meeting the following minimum qualifications:

13 (1) is included within the definition of "basic  
14 industry" as set forth in division (1) of  
15 subparagraph a of paragraph 1 of subsection A of  
16 Section 3603 of this title and has been  
17 preapproved by the Oklahoma Department of  
18 Commerce to receive incentive payments pursuant  
19 to the Oklahoma Quality Jobs Program Act or the  
20 Former Military Facility Development Act. The  
21 Department shall establish a process for  
22 preapproval of applicants for the Oklahoma  
23 Quality Jobs Program Act or the Former Military  
24 Facility Development Act for purposes of this

1 division. The qualified space transportation  
2 vehicle provider shall agree to submit such  
3 information as may be required under this section  
4 and the Oklahoma Quality Jobs Program Act or the  
5 Former Military Facility Development Act to allow  
6 the Tax Commission to determine the amount of the  
7 tax credit allowed pursuant to the provisions of  
8 this section and the amount of incentive payments  
9 allowed pursuant to the Oklahoma Quality Jobs  
10 Program Act or the Former Military Facility  
11 Development Act for purposes of subsection K of  
12 this section,

13 (2) has equity capitalization of not less than ~~Ten~~  
14 ~~Million Dollars (\$10,000,000.00)~~ Twenty Million  
15 Dollars (\$20,000,000.00), and

16 (3) has received a commitment by a local governmental  
17 entity, whether by contract, letter agreement,  
18 terms sheet, resolution, ordinance or indenture,  
19 to provide funds, personal property or real  
20 property in the aggregate amount of ~~Fifteen~~  
21 ~~Million Dollars (\$15,000,000.00)~~ One Million  
22 Dollars (\$1,000,000.00) or more which will be  
23 utilized by one or more qualified space  
24 transportation vehicle providers. For purposes  
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1 of this division, such property may include  
2 personal or real property owned by a local  
3 governmental entity which has been leased to a  
4 state authority pursuant to a long-term lease or  
5 personal or real property which a local  
6 governmental entity has transferred to a state  
7 authority. If such property has been so  
8 transferred, the commitment required by this  
9 division may be satisfied if the state authority  
10 agrees in writing to make the property so  
11 transferred available for use by one or more  
12 qualified space transportation vehicle providers;

13 2. "Qualified space transportation vehicle provider" means any  
14 commercial provider organized under the laws of this state as a  
15 corporation or a limited liability company and engaged in designing,  
16 developing, producing, or operating commercial space transportation  
17 vehicles in this state;

18 3. "Space transportation vehicle" includes all types of  
19 vehicles or orbital or suborbital spacecraft, whether now in  
20 existence, developed in the future, or currently under design,  
21 development, construction, reconstruction, or reconditioning,  
22 constructed in this state and owned by a qualified space  
23 transportation vehicle provider, for the purpose of operating in, or  
24 transporting a payload to, from, or within, outer space, or in  
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1 suborbital trajectory, and includes any component of such vehicle or  
2 spacecraft not specifically designed or adapted for a payload; and

3 4. "Subsequently refunded or returned", when used in reference  
4 to an eligible investment, means an actual redemption by the  
5 qualified space transportation vehicle provider of the securities or  
6 other indicia of ownership in the qualified space transportation  
7 vehicle provider received by the investor from the investor's  
8 investment. The failure to allow the tax credits or the recapture  
9 of the tax credits shall not affect the validity of the tax credits  
10 in the hands of a transferee of the initial investor or subsequent  
11 transferees. Provided, an investor to whom an eligible investment,  
12 or portion thereof, is subsequently refunded or returned shall  
13 reimburse the Tax Commission the amount of any credits claimed by a  
14 transferee with respect to any such amount.

15 D. The tax credit provided for in this section shall not be  
16 allowed or, if already claimed, shall be subject to recapture as to  
17 the initial investor or investors with respect to any amount of an  
18 eligible investment made which is subsequently refunded or returned  
19 to such investor. Further, a tax credit shall not be allowed to an  
20 investor making an eligible investment in a qualified space  
21 transportation vehicle provider or shall be subject to recapture as  
22 to the initial investor or investors if previously allowed if the  
23 qualified space transportation vehicle provider in which the  
24 investment was made fails to make use of such funds or property  
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1 within three (3) years of the date the tax credit was allowed. Any  
2 recapture under this subsection shall only apply as to that part of  
3 the tax credit as is associated with the amount of the investment  
4 which is subsequently refunded or returned or which is not utilized.

5 E. The Tax Commission shall:

6 1. Certify, upon request of an authorized agent or  
7 representative of a qualified space transportation vehicle provider,  
8 that the qualified space transportation vehicle provider for which  
9 the certification is sought meets the qualifications prescribed by  
10 subparagraph b of paragraph 1 of subsection C of this section. The  
11 certification shall be in writing and signed by an authorized  
12 representative of the Tax Commission and, for purposes of  
13 determining qualifications of a qualified space transportation  
14 vehicle provider in which an investment may be eligible for the  
15 credit authorized by this section, shall be binding upon the Tax  
16 Commission; and

17 2. Issue a certificate to an investor that provides adequate  
18 documentation of qualification for the credit authorized by this  
19 section even if the credit may not be claimed until after the date  
20 upon which the certificate is requested. Upon issuance, the  
21 certificate shall be evidence that an investor or a transferee of  
22 the original tax credit claimant submitting the certificate, or a  
23 certified copy thereof, with the relevant tax return or other form,  
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1 has the legal right to exercise the credit in order to reduce the  
2 relevant tax liability for the period authorized by this section.

3 F. The maximum amount of all eligible investments for which tax  
4 credits may be claimed under this section shall be Thirty Million  
5 Dollars (\$30,000,000.00). If more than one qualified space  
6 transportation vehicle provider has been certified by the Tax  
7 Commission pursuant to the provisions of subsection E of this  
8 section, the investors in the first such approved qualified space  
9 transportation vehicle provider shall be entitled to a credit based  
10 on their investment of the lesser of their eligible investment or  
11 Thirty Million Dollars (\$30,000,000.00). The investors in the  
12 second such approved qualified space transportation vehicle provider  
13 shall then be entitled to a credit based on their investment of the  
14 lesser of their eligible investment or the difference between the  
15 total eligible investments in previously approved qualified space  
16 transportation vehicle providers and Thirty Million Dollars  
17 (\$30,000,000.00). This same procedure will apply for all  
18 subsequently approved qualified space transportation vehicle  
19 providers. If the amount of eligible investments exceeds the amount  
20 upon which the tax credit may be claimed as provided herein,  
21 investors shall be allowed a share of the amount of the available  
22 tax credit in order of the dates of receipt of certification  
23 therefor by the Tax Commission pursuant to the provisions of  
24 paragraph 1 of subsection E of this section.

1 G. The amount of the tax credit allowed pursuant to the  
2 provisions of subsection A of this section shall be deemed fully  
3 earned as of the date of the investment and shall be fully  
4 redeemable as follows:

Period for Which	
Tax Liability Determined	Credit Allowed
Tax year subsequent to year of eligible investment	10.6% of eligible investment
Second tax year subsequent to year of eligible investment	11.236% of eligible investment
Third tax year subsequent to year of eligible investment	11.910% of eligible investment
Fourth tax year subsequent to year of eligible investment	12.624% of eligible investment
Fifth tax year subsequent to year of eligible investment	13.381% of eligible investment

22 H. The amount of a tax credit allowed pursuant to the  
23 provisions of this section not used in payment of taxes due in the  
24 year in which such credit is allowed pursuant to subsection G of  
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1 this section may be used as a credit against subsequent tax  
2 liability of the investor or a subsequent transferee for a period  
3 not to exceed three (3) years from the year in which such credit is  
4 originally allowed.

5 I. The Tax Commission shall develop and issue appropriate forms  
6 and instructions to enable investors to claim the tax credit  
7 provided for in this section.

8 J. A qualified space transportation vehicle provider in which  
9 an eligible investment qualifies for a credit authorized by this  
10 section shall maintain a record of investment made in the qualified  
11 space transportation vehicle provider for the period beginning  
12 January 1, 2001, and ending December 31, ~~2003~~ 2029. The qualified  
13 space transportation vehicle provider shall notify the Tax  
14 Commission not later than January 31, 2004, of the total investment  
15 amount for such period. Any such qualified space transportation  
16 vehicle provider which refunds or returns any amount of an eligible  
17 investment to the investor shall notify the Tax Commission in  
18 writing of the amount and recipient of such refunds or returns. The  
19 Tax Commission shall compute the maximum amount of credits available  
20 pursuant to this section based upon notification of the investment  
21 amount transmitted to the Tax Commission by the qualified space  
22 transportation vehicle provider.

23 K. A qualified space transportation vehicle provider in which  
24 eligible investments qualify for the tax credit authorized by this  
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1 section shall not receive incentive payments pursuant to the  
2 Oklahoma Quality Jobs Program Act or the Former Military Facility  
3 Development Act until the total of such incentive payments the  
4 qualified space transportation vehicle provider would otherwise  
5 receive exceeds the total amount of the credit authorized by this  
6 section as computed by the Tax Commission pursuant to subsection J  
7 of this section. The amount of incentive payments for any year  
8 which would otherwise be paid to the qualified space transportation  
9 vehicle provider shall be distributed as follows:

10 1. If the amount of such incentive payments equals or exceeds  
11 the amount of the tax credit for the year, the amount of such  
12 payments which is equal to the amount of the tax credit shall be  
13 apportioned as if collected from the tax imposed by Section 2355 or  
14 2370 of this title or Section 624 or 628 of Title 36 of the Oklahoma  
15 Statutes according to the tax against which the credit was claimed.  
16 The amount of such payments which is in excess of the amount of the  
17 tax credit shall be retained by the Tax Commission to be paid as  
18 provided for in this paragraph for subsequent years for which the  
19 tax credit is allowed to the qualified space transportation vehicle  
20 provider;

21 2. If the amount of such incentive payments and any amount  
22 retained by the Tax Commission pursuant to the provisions of  
23 paragraph 1 of this subsection is less than the amount of the tax  
24 credit for the year, notwithstanding the provisions of Section 1727  
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1 of Title 69 of the Oklahoma Statutes, the Tax Commission shall  
2 withhold a portion of the taxes levied and collected pursuant to the  
3 provisions of paragraph 1 of subsection A of Section 500.4 of this  
4 title which would otherwise be paid to the Department of  
5 Transportation by the Oklahoma Transportation Authority pursuant to  
6 the provisions of paragraph (2) of subsection (d) of Section 1730 of  
7 Title 69 of the Oklahoma Statutes equal to the amount of the  
8 deficit.

9 The Tax Commission shall apportion all funds collected pursuant  
10 to the provisions of this paragraph as if collected from the tax  
11 imposed by Section 2355 or 2370 of this title or Section 624 or 628  
12 of Title 36 of the Oklahoma Statutes according to the tax against  
13 which the credit was claimed; and

14 3. If any amount is withheld by or paid to the Tax Commission  
15 pursuant to the provisions of paragraph 2 of this subsection, the  
16 amount of incentive payments to be subsequently paid to the  
17 qualified space transportation vehicle provider shall be apportioned  
18 by the Tax Commission to the Department of Transportation until such  
19 time as all amounts paid pursuant to the provisions of paragraph 2  
20 of this subsection are repaid.

21 L. A qualified space transportation vehicle provider in which  
22 investments qualify for the credit allowed by this section shall not  
23 be entitled to payment of any incentive payments accrued prior to  
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1 January 1, 2001, under the Oklahoma Quality Jobs Program Act or the  
2 Former Military Facility Development Act.

3 M. Notwithstanding the provisions of this section, a qualified  
4 space transportation vehicle provider may, prior to the issuance of  
5 a tax credit with respect to the qualified space transportation  
6 vehicle provider pursuant to the provisions of this section, elect  
7 to receive incentive payments pursuant to the provisions of the  
8 Oklahoma Quality Jobs Program Act or the Former Military Facility  
9 Development Act in lieu of allowing the tax credit provided for  
10 herein, in which case it shall so notify the Tax Commission in  
11 writing and the provisions of this section shall not be applicable.

12 N. Except as provided by subsection M of this section, no  
13 qualified space transportation vehicle provider which would  
14 otherwise qualify for incentive payments pursuant to the provisions  
15 of the Oklahoma Quality Jobs Program Act or the Former Military  
16 Facility Development Act may receive such incentive payments prior  
17 to January 1, 2003.

18 O. No qualified space transportation vehicle provider which has  
19 made application to the Oklahoma Department of Commerce or which has  
20 executed any agreement with the Oklahoma Department of Commerce with  
21 respect to the receipt of incentive payments pursuant to the  
22 provisions of the Oklahoma Quality Jobs Program Act or the Former  
23 Military Facility Development Act or which has received any  
24 incentive payment pursuant to the Oklahoma Quality Jobs Program Act  
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1 or the Former Military Facility Development Act prior to May 24,  
2 2001, may be certified for purposes of determining eligibility for  
3 the credit authorized by this section.

4 SECTION 2. This act shall become effective November 1, 2024.

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