

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 746

6 By: Smalley

7 COMMITTEE SUBSTITUTE

8 An Act relating to income tax credits; defining
9 terms; authorizing Oklahoma Department of Commerce to
10 adopt certain procedures or rules; providing for tax
11 credit for certain software or cybersecurity
12 employees; providing for specified amount of credit
13 for specified employees; imposing maximum number of
14 taxable years for which credit may be claimed;
15 prohibiting use of credit under certain
16 circumstances; prohibiting use of credit to reduce
17 tax liability below a certain amount; authorizing
18 carryover for certain number of years; establishing
19 total annual limitation on amount of credits allowed;
20 requiring Oklahoma Tax Commission to publish certain
21 percentage; providing methodology for certain
22 calculation; permitting certain excess credits under
23 specified circumstance; providing for codification;
24 and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 2357.405 of Title 68, unless
there is created a duplication in numbering, reads as follows:

A. As used in this section:

1 1. "Compensation" means payments in the form of contract labor
2 for which the payor is required to provide a Form 1099 to the person
3 paid, wages subject to withholding tax paid to a part-time employee
4 or full-time employee, or salary or other remuneration.
5 Compensation shall not include employer-provided retirement, medical
6 or healthcare benefits, reimbursement for travel, meals, lodging or
7 any other expense. Annual compensation shall only qualify if the
8 average annualized wage equals at least one hundred ten percent
9 (110%) of the average county wage, as that percentage is determined
10 by the U.S. Department of Commerce based upon the most recent
11 Department of Commerce data for the county in which the job is
12 located; or, for federal employees, such employees shall meet a GS-5
13 or equivalent initial hiring threshold in lieu of the wage
14 requirement;

15 2. "Institution" means an institution within The Oklahoma State
16 System of Higher Education or any other public or private college or
17 university that is accredited by a national accrediting body;

18 3. "Qualified employer" means a sole proprietor, general
19 partnership, limited partnership, limited liability company,
20 corporation, other legally recognized business entity or public
21 entity whose principal business activity requires employment of
22 qualified software or cybersecurity employees, as defined in this
23 section;

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1 4. "Qualified industry" means a private or public company whose
2 activities are defined or classified in the NAICS Manual under U.S.
3 Industry No's. 21, 22, 31, 48, 51, 52, 54, 55, 62 and 90;

4 5. "Qualified program" means an accredited program that awards
5 a credential in the fields of software engineering or cybersecurity;
6 and

7 6. "Qualified software or cybersecurity employee" means any
8 person first employed in this state by or first contracting in this
9 state with a qualified employer on or after the effective date of
10 this act, who:

11 a. has been awarded an undergraduate or graduate degree
12 by an institution, or

13 b. has been awarded a two-year associates degree by an
14 institution or a software or cybersecurity credential
15 from a qualified program or institution.

16 Provided, in order to claim the credit provided pursuant to this
17 section, a taxpayer shall first have been certified by the Oklahoma
18 Department of Commerce as meeting the qualifications of this
19 paragraph for the applicable tax year. The Oklahoma Department of
20 Commerce is authorized to adopt any rules or procedures necessary to
21 implement the certification process.

22 B. 1. Subject to the limitations of subsections C and D of
23 this section, for taxable years beginning on or after January 1,
24 2020, and ending on December 31, 2029, a qualified software or

1 cybersecurity employee shall be allowed a credit against the tax
2 imposed pursuant to Section 2355 of Title 68 of the Oklahoma
3 Statutes, subject to the limitations prescribed in paragraph 2 of
4 this subsection.

5 2. The credit, which may be claimed for a period of time not to
6 exceed seven (7) years, shall be as follows:

7 a. Two Thousand Two Hundred Dollars (\$2,200.00) for a
8 qualified employee who has been awarded an
9 undergraduate or graduate degree from an institution,
10 or

11 b. One Thousand Eight Hundred Dollars (\$1,800.00) for a
12 qualified employee who has been awarded a two-year
13 associates degree or a credential from a qualified
14 program or institution.

15 3. No taxpayer shall claim both the credit provided pursuant to
16 this section and the credit provided pursuant to Section 2357.304 of
17 Title 68 of the Oklahoma Statutes, for the same tax year.

18 4. The credit authorized by this subsection shall not be used
19 to reduce the tax liability of the taxpayer to less than zero (0).

20 5. Any credit claimed, but not used, may be carried over, in
21 order, to each of the five (5) subsequent taxable years.

22 C. For the tax year beginning January 1, 2020, and each tax
23 year thereafter, the total amount of credits authorized by this
24 section used to offset tax shall be adjusted annually to limit the

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

9 D. Pursuant to subsection C of this section, in the event the
10 total tax credits authorized by this section exceed Five Million
11 Dollars (\$5,000,000.00) in any calendar year, the Tax Commission
12 shall permit any excess over Five Million Dollars (\$5,000,000.00)
13 but shall factor such excess into the percentage adjustment formula
14 for subsequent years.

15 SECTION 2. This act shall become effective November 1, 2019.

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