

1 STATE OF OKLAHOMA

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

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL 747

6 By: McCortney

7 COMMITTEE SUBSTITUTE

8 An Act relating to income tax; amending 68 O.S. 2011,
9 Section 2357.4, as last amended by Section 1, Chapter
10 329, O.S.L. 2016 (68 O.S. Supp. 2018, Section
11 2357.4), which relates to credits for qualified
12 investment in property of new jobs; modifying dollar
13 threshold for qualified investment; modifying
14 employee salary requirement for qualified new jobs;
15 modifying length of carry forward period for unused
16 credits for investment and new jobs after specified
17 date; and providing an effective date.

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

19 SECTION 1. AMENDATORY 68 O.S. 2011, Section 2357.4, as
20 last amended by Section 1, Chapter 329, O.S.L. 2016 (68 O.S. Supp.
21 2018, Section 2357.4), is amended to read as follows:

22 Section 2357.4. A. Except as otherwise provided in subsection
23 F of Section 3658 of this title and in subsections J and K of this
24 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 1. Investment in qualified depreciable property placed in
2 service during those years for use in a manufacturing operation, as
3 defined in Section 1352 of this title, which has received a
4 manufacturer exemption permit pursuant to the provisions of Section
5 1359.2 of this title or a qualified aircraft maintenance or
6 manufacturing facility as defined in Section 1357 of this title in
7 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 in qualified depreciable property with a total
23 cost equal to or greater than Forty Million Dollars (\$40,000,000.00)
24 within three (3) years from the date of initial qualifying

1 expenditure and placed in service in this state during those years
2 for use in the manufacture of products described by any Industry
3 Number contained in Division D of Part I of the Standard Industrial
4 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)~~ One Hundred Fifty
7 Thousand Dollars (\$150,000.00). The credit provided for in
8 subsection A or B of this section shall not be allowed if the
9 applicable investment is the direct cause of a decrease in the
10 number of full-time-equivalent employees. Qualified property shall
11 be limited to machinery, fixtures, equipment, buildings or
12 substantial improvements thereto, placed in service in this state
13 during the taxable year. The taxable years for which the credit may
14 be allowed if based upon investment in qualified depreciable
15 property shall be measured from the year in which the qualified
16 property is placed in service. If the credit provided for in
17 subsection A or B of this section is calculated on the basis of the
18 cost of the qualified property, the credit shall be allowed in each
19 of the four (4) subsequent years. If the qualified property on
20 which a credit has previously been allowed is acquired from a
21 related party, the date such property is placed in service by the
22 transferor shall be considered to be the date such property is
23 placed in service by the transferee, for purposes of determining the
24 aggregate number of years for which credit may be allowed.

1 F. 1. The credit provided for in subsection A or B of this
2 section, if based upon an increase in the number of full-time-
3 equivalent employees, shall be allowed in each of the four (4)
4 subsequent years only if the level of new employees is maintained in
5 the subsequent year. In calculating the credit by the number of new
6 employees, only those employees whose paid wages or salary ~~were at~~
7 ~~least Seven Thousand Dollars (\$7,000.00)~~ meet the minimum salary
8 requirements of paragraph 2 of this subsection during each year the
9 credit is claimed shall be included in the calculation. Provided,
10 that the first year a credit is claimed for a new employee, such
11 employee may be included in the calculation notwithstanding paid
12 wages ~~of less than Seven Thousand Dollars (\$7,000.00)~~ which do not
13 meet the minimum requirements if the employee was hired in the last
14 three quarters of the tax year, has wages or salary which will
15 result in annual paid wages in excess of ~~Seven Thousand Dollars~~
16 ~~(\$7,000.00)~~ the minimum salary requirements and the taxpayer submits
17 an affidavit stating that the employee's position will be retained
18 in the following tax year and will result in the payment of wages in
19 excess of ~~Seven Thousand Dollars (\$7,000.00)~~ the minimum salary
20 requirements.

21 2. For an employee used in the calculation of the credit
22 provided for in this section, if the employee is hired before the
23 effective date of this act, a minimum salary requirement in excess
24 of annual paid wages of Seven Thousand Dollars (\$7,000.00) shall

1 apply. For an employee hired after the effective date of this act,
2 the employee may be used in the calculation of the credit provided
3 for in this section only if the employee's average annualized wage
4 equals or exceeds:

5 a. one hundred ten percent (110%) of the average county
6 wage as determined by the Department of Commerce based
7 on the most recent U.S. Department of Commerce data
8 for the county in which the new job is located. For
9 purposes of this paragraph, health care premiums paid
10 by the employer for an employee shall be included in
11 the annualized wage, or

12 b. one hundred percent (100%) of the average county wage
13 as that percentage is determined by the Department of
14 Commerce based upon the most recent U.S. Department of
15 Commerce data for the county in which the new job is
16 located. For purposes of this paragraph, health care
17 premiums paid by the employer for an employee shall
18 not be included in the annualized wage.

19 Provided, no average wage requirement shall exceed Twenty-five
20 Thousand Dollars (\$25,000.00), in any county. This maximum wage
21 threshold shall be indexed and modified from time to time based on
22 the latest Consumer Price Index year-to-date percent change release
23 as of the date of the annual average county wage data release from
24 the Bureau of Economic Analysis of the U.S. Department of Commerce.

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

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

9 1. One percent (1%) of the cost of the qualified property in
10 the year the property 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. The credit allowed by subsection B of this section shall be
17 the greater amount of either:

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

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

21 No credit shall be allowed in any taxable year for a net
22 increase in the number of full-time-equivalent employees if such
23 increase is a result of an investment in qualified depreciable
24

1 property for which an income tax credit has been allowed as
2 authorized by this section.

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

6 1. ~~To~~ For any property placed in service or net increase in
7 full-time employees occurring before February 1, 2019:

8 a. to each of the four (4) years following the year of
9 qualification~~;~~;

10 ~~2. To~~

11 b. to the extent not used in those years in order to each
12 of the fifteen (15) years following the initial five-
13 year period~~;~~;

14 ~~3. If~~

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

23 ~~4. To~~

24

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

6 ~~5.~~ Provided

7 e. provided, for tax years beginning on or after January
8 1, 2016, and ending on or before December 31, 2018,
9 the amount of credits available as an offset in a
10 taxable year shall be limited to the percentage
11 calculated by the Tax Commission pursuant to the
12 provisions of subsection L of this section; and

13 2. a. For credits based on investment in qualified
14 depreciable property occurring on or after February 1,
15 2019, pursuant to paragraph 1 of subsection A of this
16 section or paragraph 1 of subsection B of this
17 section, to each of the five (5) years following the
18 year of qualification, and

19 b. For credits based on a net increase in employment
20 occurring on or after February 1, 2019, pursuant to
21 paragraph 2 of subsection A of this section or
22 paragraph 2 of subsection B of this section, to each
23 of the ten (10) years following the year of
24 qualification.

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

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

1 L. For tax years beginning on or after January 1, 2016, and
2 ending on or before December 31, 2018, the total amount of credits
3 authorized by this section used to offset tax shall be adjusted
4 annually to limit the annual amount of credits to Twenty-five
5 Million Dollars (\$25,000,000.00). The Tax Commission shall annually
6 calculate and publish a percentage by which the credits authorized
7 by this section shall be reduced so the total amount of credits used
8 to offset tax does not exceed Twenty-five Million Dollars
9 (\$25,000,000.00) per year. The formula to be used for the
10 percentage adjustment shall be Twenty-five Million Dollars
11 (\$25,000,000.00) divided by the credits used to offset tax in the
12 second preceding year.

13 M. Pursuant to subsection L of this section, in the event the
14 total tax credits authorized by this section exceed Twenty-five
15 Million Dollars (\$25,000,000.00) in any calendar year, the Tax
16 Commission shall permit any excess over Twenty-five Million Dollars
17 (\$25,000,000.00) but shall factor such excess into the percentage
18 adjustment formula for subsequent years.

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