

1 **SENATE FLOOR VERSION**

2 February 12, 2020

3 **AS AMENDED**

4 SENATE BILL NO. 1322

By: Thompson of the Senate

and

Wallace of the House

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9 **[income tax credits - railroad reconstruction or**
10 **replacement expenditures - taxpayer election and**
11 **related prohibition - annual cap - effective date]**

12
13 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

14 SECTION 1. AMENDATORY 68 O.S. 2011, Section 2357.104, as
15 last amended by Section 1, Chapter 7, 2nd Extraordinary Session,
16 O.S.L. 2018 (68 O.S. Supp. 2019, Section 2357.104), is amended to
17 read as follows:

18 Section 2357.104. A. Except as otherwise provided by this
19 section, for taxable years beginning after December 31, 2005, and
20 ending before January 1, 2025, there shall be allowed a credit
21 against the tax imposed by Section 2355 of this title equal to fifty
22 percent (50%) of an eligible taxpayer's qualified railroad
23 reconstruction or replacement expenditures.

24 B. ~~1. Except as provided in paragraph 2 of this subsection~~

1 For tax years 2020 through 2024, the amount of the credit shall be
2 limited to the product of ~~Five Hundred Dollars (\$500.00) for tax~~
3 ~~year 2007 and Two Thousand Dollars (\$2,000.00) for tax year 2008 and~~
4 ~~subsequent tax years~~ Five Thousand Dollars (\$5,000.00) and the
5 number of miles of railroad track owned or leased within this state
6 by the eligible taxpayer as of the close of the taxable year.

7 ~~2. In tax year 2009 and subsequent tax years, a taxpayer may~~
8 ~~elect to increase the limit provided in paragraph 1 of this~~
9 ~~subsection to an amount equal to three times the limit specified in~~
10 ~~paragraph 1 of this subsection for qualified expenditures made in~~
11 ~~the tax year; provided, the taxpayer may only claim one third (1/3)~~
12 ~~of the credit in any one taxable period.~~

13 C. The credit allowed pursuant to subsection A of this section
14 but not used shall be freely transferable, by written agreement, to
15 subsequent transferees at any time during the five (5) years
16 following the year of qualification. An eligible transferee shall
17 be any taxpayer subject to the tax imposed by Section 2355 of this
18 title. The person originally allowed the credit and the subsequent
19 transferee shall jointly file a copy of the written credit transfer
20 agreement with the Oklahoma Tax Commission within thirty (30) days
21 of the transfer. The written agreement shall contain the name,
22 address and taxpayer identification number of the parties to the
23 transfer, the amount of credit being transferred, the year the
24 credit was originally allowed to the transferring person and the tax

1 year or years for which the credit may be claimed. The Tax
2 Commission shall promulgate rules to permit verification of the
3 timeliness of a tax credit claimed upon a tax return pursuant to
4 this subsection but shall not promulgate any rules which unduly
5 restrict or hinder the transfers of such tax credit. The Department
6 of Transportation shall promulgate rules to permit verification of
7 the eligibility of an eligible taxpayer's expenditures for the
8 purpose of claiming the credit. The rules shall provide for the
9 approval of qualified railroad reconstruction or replacement
10 expenditures prior to commencement of a project and provide a
11 certificate of verification upon completion of a project that uses
12 qualified railroad reconstruction or replacement expenditures. The
13 certificate of verification shall satisfy all requirements of the
14 Tax Commission pertaining to the eligibility of the person claiming
15 the credit.

16 D. Any credits allowed pursuant to the provisions of subsection
17 A of this section but not used in any tax year may be carried over
18 in order to each of the five (5) years following the year of
19 qualification.

20 ~~E. A taxpayer who elects to increase the limitation on the~~
21 ~~credit under paragraph 2 of subsection B of this section shall not~~
22 ~~be granted additional credits under subsection A of this section~~
23 ~~during the period of such election.~~

24 ~~F.~~ As used in this section:

1 1. "Class II and Class III railroad" means a railroad that is
2 classified by the United States Surface Transportation Board as a
3 Class II or Class III railroad;

4 2. "Eligible taxpayer" means any Class II or Class III
5 railroad; and

6 3. "Qualified railroad reconstruction or replacement
7 expenditures" means expenditures for:

- 8 a. track maintenance, natural disasters, and
9 reconstruction or replacement of railroad
10 infrastructure including track, roadbed, crossings,
11 bridges, industrial leads and track-related structures
12 owned or leased by a Class II or Class III railroad as
13 of January 1, 2006, or
- 14 b. new construction of industrial leads, switches, spurs
15 and sidings and extensions of existing sidings by a
16 Class II or Class III railroad.

17 ~~G. No credit otherwise authorized by the provisions of this~~
18 ~~section may be claimed for any event, transaction, investment,~~
19 ~~expenditure or other act occurring on or after July 1, 2010, for~~
20 ~~which the credit would otherwise be allowable. The provisions of~~
21 ~~this subsection shall cease to be operative on July 1, 2012.~~
22 ~~Beginning July 1, 2012, the credit authorized by this section may be~~
23 ~~claimed for any event, transaction, investment, expenditure or other~~

1 ~~act occurring on or after July 1, 2012, according to the provisions~~
2 ~~of this section.~~

3 ~~H. The credit otherwise authorized by the provisions of this~~
4 ~~section shall be reduced by twenty-five percent (25%) for any~~
5 ~~taxable year which begins on or after January 1, 2016. The~~
6 ~~provisions of this subsection shall not be applicable to tax credits~~
7 ~~carried forward from any tax year which began prior to January 1,~~
8 ~~2016.~~

9 ~~I. For tax years beginning on or after January 1, 2018, the F.~~
10 ~~The total amount of credits authorized by this section used to~~
11 ~~offset tax shall be adjusted annually to limit the annual amount of~~
12 ~~credits to Two Million Dollars (\$2,000,000.00) for tax years 2018~~
13 ~~and 2019 and Five Million Dollars (\$5,000,000.00) for tax year 2020~~
14 ~~and all subsequent tax years. The Tax Commission shall annually~~
15 ~~calculate and publish a percentage by which the credits authorized~~
16 ~~by this section shall be reduced so the total amount of credits used~~
17 ~~to offset tax does not exceed ~~Two Million Dollars (\$2,000,000.00)~~~~
18 ~~per year the applicable annual limit. The formula to be used for~~
19 ~~the percentage adjustment shall be ~~Two Million Dollars~~~~
20 ~~~~(\$2,000,000.00)~~ the applicable annual limit divided by the credits~~
21 ~~claimed in the second preceding year.~~

22 ~~J. G. Pursuant to subsection ~~F~~ F of this section, in the event~~
23 ~~the total tax credits authorized by this section exceed ~~Two Million~~~~
24 ~~~~Dollars (\$2,000,000.00)~~ the annual applicable limit in any calendar~~

1 year, the Tax Commission shall permit any excess over ~~Two Million~~
2 ~~Dollars (\$2,000,000.00)~~ the annual applicable limit but shall factor
3 such excess into the percentage adjustment formula for subsequent
4 years.

5 SECTION 2. This act shall become effective November 1, 2020.

6 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS
7 February 12, 2020 - DO PASS AS AMENDED
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