

BILL SUMMARY
2nd Session of the 58th Legislature

Bill No.:	HB 3081
Version:	INT
Request Number:	8844
Author:	Rep. Hilbert
Date:	2/22/2022
Impact:	Tax Commission:

FY 23: Unknown decrease in income tax collections
FY 24: Unknown decrease in income tax collections¹

Research Analysis

HB3081, as introduced, creates an income tax credit for up to 10 percent of qualified economic development expenditures and 50 percent of initial infrastructure expenditures incurred by an eligible business for a qualifying project. The qualifying project must be located in an industrial park, economic development zone, or port in a county with a population of 100,000 or less or be adjacent to a terminal, switching or Class II or III railroad. The Oklahoma Department of Commerce is responsible for verifying the eligibility of a project, reviewing eligible expenses and allocating credits.

Each qualifying project is subject to the following tax credit caps:

- \$6 million for economic development expenditures;
- \$3 million for initial infrastructure expenditures; and
- \$6 million combined cap for both economic development and infrastructure expenditures.

The tax credit may be claimed beginning tax year 2023 through 2027, is subject to a \$12 million annual cap, may be carried over for up to 5 subsequent tax years and may be assigned to a qualifying project affiliate upon submission of a written assignment agreement to the Oklahoma Tax Commission.

Prepared By: Quyen Do

Fiscal Analysis

Analysis provided by the Tax Commission:

HB 3081 proposes to enact a new, non-refundable income tax credit for amounts invested for strategic industrial development enhancement (SIDE) projects effective for tax years 2023 through 2027. This credit is to be allocated by the Oklahoma Department of Commerce (Commerce) to a qualifying project and is transferable.

In order to generate the proposed SIDE income tax credit a project sponsor must submit a project application to Commerce. The proposed credit will generally be an amount that may not exceed 10% of an eligible entity's qualified economic development expenditures for a qualifying project as determined by Commerce. Qualified initial infrastructure expenditures may be earned at a rate of 50% of qualified initial infrastructure expenditures. The project tax credit amount may not exceed \$3 million for qualified initial infrastructure expenditures per qualifying project or \$6 million for qualified economic development expenditures per qualifying project. The project tax credit may consist of a combination based on qualified economic development expenditures and qualified initial infrastructure expenditures. If the credits are combined, the project tax credit amount may not exceed \$6 million per qualifying project.² Commerce will issue the project tax credit amounts subject to a review of eligible expenditures.³

SIDE credits allocated by Commerce that are not used may be assigned to a qualifying project affiliate⁴ by written agreement at any time during the 5 years following the tax year the qualified expenditure occurred. The qualifying project affiliate and the eligible taxpayer⁵ must jointly file a copy of a written assignment agreement containing name, address, and taxpayer identification number of the parties to the assignment, as well as the tax year the eligible expenditures occurred, the amount of credit, and the tax year or years which the credit may be claimed, with the Oklahoma Tax Commission within 30 days of the assignment.

In addition to the per project cap outlined above, SIDE credits are capped⁶ at \$12 million beginning with tax year 2023; however, due to the two-year look back period, there is no cap for tax years 2023 and 2024. It is anticipated that estimated tax payments would be adjusted to account for the tax credits in 2023; therefore, an unknown decrease in income tax collections would occur in FY23 and FY24.

¹ SIDE credits are capped at \$12 million beginning with tax year 2023, but there is a two-year look back period, so effectively there is no cap for tax years 2023 and 2024.

² The project tax credit amount that may be claimed or assigned to a qualifying project affiliate in any year may not exceed 1/3 of the project tax credit amount awarded beginning in the year that construction is initiated

³ Commerce must promulgate rules to permit verification of project eligibility of the proposed credit, including precertification. Any certificate of verification for the proposed credit issued by Commerce is binding on the Tax Commission as to eligibility to claim the credit. The Tax Commission may also promulgate rules and take any other actions to administer the proposed credit.

⁴ Qualifying project affiliate may be a customer, vendor, project investor, or strategic finance partner of the eligible entity subject to the Oklahoma corporate or individual income tax.

⁵ Although not defined, "eligible taxpayer" is assumed to be the eligible entity.

⁶ For the tax year beginning January 1, 2023 and each tax year thereafter, the total amount of credits authorized by this section used to offset tax shall be adjusted annually to limit the annual amount of credits to \$12 million. The Tax Commission shall annually calculate and publish by the first day of the affected year a percentage by which the credits authorized by this section shall be reduced so the total amount of credits used to offset tax does not exceed \$12 million per year. The formula to be used for the percentage adjustment shall be \$12 million divided by the credits claimed in the **second preceding year**.

Prepared By: Mark Tygret

Other Considerations

None.

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