

OKLAHOMA TAX COMMISSION

REVENUE IMPACT STATEMENT SECOND REGULAR SESSION, FIFTY-EIGHTH OKLAHOMA LEGISLATURE

DATE OF IMPACT STATEMENT: March 18, 2022

BILL NUMBER: HB 3081 STATUS AND DATE OF BILL: Engrossed Bill 3/14/2022

AUTHORS: House Hilbert & Phillips Senate Leewright

TAX TYPE (S): Income Tax SUBJECT: Credit

PROPOSAL: New Law

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

EFFECTIVE DATE: January 1, 2023

REVENUE IMPACT:

Insert dollar amount (plus or minus) of the expected change in state revenues due to this proposed legislation.

FY 23: Unknown decrease in income tax collections

FY 24: Unknown decrease in income tax collections¹

Apr 6, 2022
DATE

Rick Miller
DIVISION DIRECTOR

mk

4/6/2022
DATE

Huan Gong
HUAN GONG, ECONOMIST

4/8/2022
DATE

Joseph P. Hayes
FOR THE COMMISSION

The revenue impact provided herein is an estimate of the potential impact on the collection or apportionment of tax revenues affected by the proposed legislation. It is not intended to be an estimate of the overall fiscal impact on the state budget if the proposed legislation is enacted.

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.

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.

As used in this measure:

- "Eligible entity" means a business entity incorporated and located in the state with a qualifying project in a qualifying project location that receives an allocation of tax credits for qualified economic development and qualified initial infrastructure expenditures;
- "Qualifying project" means the new construction or expansion of an eligible entity or the development of qualified initial infrastructure to serve an eligible entity in a qualifying project location;
- "Qualifying project location" means a project located in an industrial park, economic development zone, or port located within a county in this state with a population of less than one hundred thousand (100,000) persons ("Qualified Area"), or a project located adjacent to a terminal, switching, or Class II or III railroad as defined by the federal Surface Transportation Board;
- "Project sponsor" means a local economic development organization or authority, organized under Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), port authority, qualified industrial park, or a terminal, switching, or Class II or III railroad;

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.

- "Project application" means an application submitted by a project sponsor on behalf of a qualifying project for an allocation of qualifying strategic industrial development enhancement (SIDE) tax credits. Project applications must include a description of the qualifying project, project location, detailed project costs, and a summary of expected economic benefits and job creation;
- "Qualified economic development expenditures" means expenditures for land improvements, building construction, building improvements and expansion, port terminal improvements, and the purchase of certain machinery and equipment;
- "Qualified initial infrastructure expenditures" means expenditures for new rail infrastructure and improvements, which includes the acquisition of right of way, engineering, construction of new track such as industrial leads, switches, spurs, and sidings, loading dock improvements, and transloading structures involved with providing rail service to a qualifying project;
- "Project tax credit amount" means the amount of tax credits allocated by Oklahoma Department of Commerce to a qualifying project for qualified economic development and initial infrastructure expenditures.

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.

⁶For 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**.