

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 315

6 By: Rader

7 COMMITTEE SUBSTITUTE

8 An Act relating to income tax credit; amending 68
9 O.S. 2021, Section 2357.4, which relates to tax
10 credit for investments in qualified depreciable
11 property and a net increase in full-time-equivalent
12 employees; limiting certain credit to certain tax
13 years; limiting requirement to provide satisfactory
14 proof to certain years; limiting carry forward of
15 certain credits to certain years; providing for carry
16 forward of certain credits; requiring submission of
17 claim to carry forward credit; and providing an
18 effective date.

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

20 SECTION 1. AMENDATORY 68 O.S. 2021, Section 2357.4, is
21 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 For tax years 1988 through 2023, a net increase in the
10 number of full-time-equivalent employees in a manufacturing
11 operation, as defined in Section 1352 of this title, which has
12 received a manufacturer exemption permit pursuant to the provisions
13 of Section 1359.2 of this title or a qualified aircraft maintenance
14 or manufacturing facility defined in Section 1357 of this title in
15 this state or in a qualified web search portal as defined in Section
16 1357 of this title including 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 For tax years 1999 through 2023, a net increase in the
6 number of full-time-equivalent employees in this state engaged in
7 the manufacture of any goods identified by any Industry Number
8 contained in Division D of Part I of the Standard Industrial
9 Classification (SIC) Manual, latest revision, if the total cost of
10 qualified depreciable property placed in service by the business
11 entity within the state equals or exceeds Forty Million Dollars
12 (\$40,000,000.00) within three (3) years from the date of initial
13 qualifying expenditure.

14 C. The For tax years 1999 through 2023, the business entity may
15 claim the credit authorized by subsection B of this section for
16 expenditures incurred or for a net increase in the number of full-
17 time-equivalent employees after the business entity provides proof
18 satisfactory to the Oklahoma Tax Commission that the conditions
19 imposed pursuant to paragraph 1 or paragraph 2 of subsection B of
20 this section have been satisfied.

21 D. If a business entity fails to expend the amount required by
22 paragraph 1 or paragraph 2 of subsection B of this section within
23 the time required, the business entity may not claim the credit
24 authorized by subsection B of this section but shall be allowed to

1 claim a credit pursuant to subsection A of this section if the
2 requirements of subsection A of this section are met with respect to
3 the investment in qualified depreciable property or net increase in
4 the number of full-time-equivalent employees.

5 E. The credit provided for in subsection A of this section, if
6 based upon investment in qualified depreciable property, shall not
7 be allowed unless the investment in qualified depreciable property
8 is at least Fifty Thousand Dollars (\$50,000.00). The credit
9 provided for in subsection A or B of this section shall not be
10 allowed if the applicable investment is the direct cause of a
11 decrease in the number of full-time-equivalent employees. Qualified
12 property shall be limited to machinery, fixtures, equipment,
13 buildings, or substantial improvements thereto, placed in service in
14 this state during the taxable year. The taxable years for which the
15 credit may be allowed if based upon investment in qualified
16 depreciable property shall be measured from the year in which the
17 qualified property is placed in service. If the credit provided for
18 in subsection A or B of this section is calculated on the basis of
19 the cost of the qualified property, the credit shall be allowed in
20 each of the four (4) subsequent years. If the qualified property on
21 which a credit has previously been allowed is acquired from a
22 related party, the date such property is placed in service by the
23 transferor shall be considered to be the date such property is

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1 placed in service by the transferee, for purposes of determining the
2 aggregate number of years for which credit may be allowed.

3 F. The credit provided for in subsection A or B of this
4 section, if based upon an increase in the number of full-time-
5 equivalent employees, shall be allowed in each of the four (4)
6 subsequent years only if the level of new employees is maintained in
7 the subsequent year. In calculating the credit by the number of new
8 employees, only those employees whose paid wages or salary were at
9 least Seven Thousand Dollars (\$7,000.00) during each year the credit
10 is claimed shall be included in the calculation. Provided, that the
11 first year a credit is claimed for a new employee, such employee may
12 be included in the calculation notwithstanding paid wages of less
13 than Seven Thousand Dollars (\$7,000.00) if the employee was hired in
14 the last three quarters of the tax year, has wages or salary which
15 will result in annual paid wages in excess of Seven Thousand Dollars
16 (\$7,000.00) and the taxpayer submits an affidavit stating that the
17 employee's position will be retained in the following tax year and
18 will result in the payment of wages in excess of Seven Thousand
19 Dollars (\$7,000.00). The number of new employees shall be
20 determined by comparing the monthly average number of full-time
21 employees subject to Oklahoma income tax withholding for the final
22 quarter of the taxable year with the corresponding period of the
23 prior taxable year, as substantiated by such reports as may be
24 required by the Tax Commission.

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

3 1. One percent (1%) of the cost of the qualified property in
4 the year the property is placed in service; or

5 2. Five Hundred Dollars (\$500.00) for each new employee. No
6 credit shall be allowed in any taxable year for a net increase in
7 the number of full-time-equivalent employees if such increase is a
8 result of an investment in qualified depreciable property for which
9 an income tax credit has been allowed as authorized by this section.

10 H. The credit allowed by subsection B of this section shall be
11 the greater amount of either:

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

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

15 No credit shall be allowed in any taxable year for a net
16 increase in the number of full-time-equivalent employees if such
17 increase is a result of an investment in qualified depreciable
18 property for which an income tax credit has been allowed as
19 authorized by this section.

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

23 1. To each of the four (4) years following the year of
24 qualification;

1 2. ~~To~~ For credits allowed in tax years 2023 and before, to the
2 extent not used in those years in order to each of the fifteen (15)
3 years following the initial five-year period;

4 3. If a C corporation that otherwise qualified for the credits
5 under subsection A of this section subsequently changes its
6 operating status to that of a pass-through entity which is being
7 treated as the same entity for federal tax purposes, the credits
8 will continue to be available as if the pass-through entity had
9 originally qualified for the credits subject to the limitations of
10 this section;

11 4. To the extent not used in paragraphs 1 and 2 of this
12 subsection, such credits from qualified depreciable property placed
13 in service on or after January 1, 2000, and before January 1, 2024,
14 may be utilized in any subsequent tax years after the initial
15 twenty-year period; ~~and~~

16 5. To the extent not used in paragraph 1 of this subsection,
17 credits from qualified depreciable property placed in service on or
18 after January 1, 2024, may be carried forward in order to each of
19 the seven (7) years following the initial five-year period, upon the
20 filing of a claim on a form prescribed by the Tax Commission for
21 each year the credit is carried forward. The form prescribed shall
22 require the claimant to attest whether the property is still in use;
23 and

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1 6. Provided, for tax years beginning on or after January 1,
2 2016, and ending on or before December 31, 2018, the amount of
3 credits available as an offset in a taxable year shall be limited to
4 the percentage calculated by the Tax Commission pursuant to the
5 provisions of subsection L of this section.

6 J. No credit otherwise authorized by the provisions of this
7 section may be claimed for any event, transaction, investment,
8 expenditure, or other act occurring on or after July 1, 2010, for
9 which the credit would otherwise be allowable until the provisions
10 of this subsection shall cease to be operative on July 1, 2012.
11 Beginning July 1, 2012, the credit authorized by this section may be
12 claimed for any event, transaction, investment, expenditure, or
13 other act occurring on or after July 1, 2010, according to the
14 provisions of this section; provided, credits accrued during the
15 period from July 1, 2010, through June 30, 2012, shall be limited to
16 a period of two (2) taxable years. The credit shall be limited in
17 each taxable year to fifty percent (50%) of the total amount of the
18 accrued credit. Any tax credits which accrue during the period of
19 July 1, 2010, through June 30, 2012, may not be claimed for any
20 period prior to the taxable year beginning January 1, 2012. No
21 credits which accrue during the period of July 1, 2010, through June
22 30, 2012, may be used to file an amended tax return for any taxable
23 year prior to the taxable year beginning January 1, 2012.

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

7 L. For tax years beginning on or after January 1, 2016, and
8 ending on or before December 31, 2018, the total amount of credits
9 authorized by this section used to offset tax shall be adjusted
10 annually to limit the annual amount of credits to Twenty-five
11 Million Dollars (\$25,000,000.00). The Tax Commission shall annually
12 calculate and publish a percentage by which the credits authorized
13 by this section shall be reduced so the total amount of credits used
14 to offset tax does not exceed Twenty-five Million Dollars
15 (\$25,000,000.00) per year. The formula to be used for the
16 percentage adjustment shall be Twenty-five Million Dollars
17 (\$25,000,000.00) divided by the credits used to offset tax in the
18 second preceding year.

19 M. Pursuant to subsection L of this section, in the event the
20 total tax credits authorized by this section exceed Twenty-five
21 Million Dollars (\$25,000,000.00) in any calendar year, the Tax
22 Commission shall permit any excess over Twenty-five Million Dollars
23 (\$25,000,000.00) but shall factor such excess into the percentage
24 adjustment formula for subsequent years.

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SECTION 2. This act shall become effective November 1, 2023.

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