

1 ENGROSSED SENATE  
2 BILL NO. 1401

By: Hall of the Senate

and

Wallace of the House

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6 An Act relating to income tax; amending Section 1,  
7 Chapter 340, O.S.L. 2022 (68 O.S. Supp. 2023, Section  
8 2357.105), which relates to credit for qualified  
9 economic development expenditures and qualified  
10 initial infrastructure expenditures; modifying  
11 definitions; eliminating certain credit limit;  
12 expanding authorization to assign certain unused  
13 credit; updating statutory reference; and providing  
14 an effective date.

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

16 SECTION 1. AMENDATORY Section 1, Chapter 340, O.S.L.  
17 2022 (68 O.S. Supp. 2023, Section 2357.105), is amended to read as  
18 follows:

19 Section 2357.105. A. As used in this section:

20 1. "Eligible entity" means ~~a business~~ an entity incorporated  
21 and located in the state with a qualifying project in a qualifying  
22 project location ~~that receives an allocation of tax credits for~~  
23 ~~qualified economic development and qualified initial infrastructure~~  
24 ~~expenditures;~~

2. "Qualifying project" means the new construction or expansion  
of an eligible entity or the development of qualified initial

1 infrastructure to serve an eligible entity in a qualifying project  
2 location;

3 3. "Qualifying project location" means a project located in an  
4 industrial park, economic development zone, or port located within a  
5 county in this state with a population of less than one hundred  
6 thousand (100,000) persons ("Qualified Area"), or a project located  
7 adjacent to a terminal, switching, or Class II or III railroad as  
8 defined by the federal Surface Transportation Board;

9 4. "Project sponsor" means a local economic development  
10 organization or authority, ~~organized under Section 501(c)(3) of the~~  
11 ~~Internal Revenue Code, 26 U.S.C., Section 501(c)(3),~~ port authority,  
12 qualified industrial park, or a terminal, switching, or Class II or  
13 III railroad;

14 5. "Project application" means an application submitted by a  
15 project sponsor on behalf of a qualifying project for an allocation  
16 of qualifying strategic industrial development enhancement (SIDE)  
17 tax credits. Project applications must include a description of the  
18 qualifying project, project location, detailed project costs, and a  
19 summary of expected economic benefits and job creation;

20 6. "Qualified economic development expenditures" means  
21 expenditures for land improvements, building construction, building  
22 improvements and expansion, port terminal improvements, and the  
23 purchase of certain machinery and equipment;

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1           7. "Qualified initial infrastructure expenditures" means  
2 expenditures for new rail infrastructure and improvements, which  
3 includes the acquisition of right-of-way, engineering,  
4 rehabilitation of existing inactive track to reinstate operation,  
5 construction of new track such as industrial leads, switches, spurs,  
6 and sidings, loading dock improvements, and transloading structures  
7 involved with providing rail service to a qualifying project; and

8           8. "Project tax credit amount" means the amount of tax credits  
9 allocated by Oklahoma Department of Commerce to a qualifying project  
10 for qualified economic development and initial infrastructure  
11 expenditures.

12           B. For tax years beginning after December 31, 2022, and ending  
13 not later than December 31, 2027, there shall be allowed a credit  
14 against the tax imposed pursuant to Section 2355 of ~~Title 68 of the~~  
15 ~~Oklahoma Statutes~~ this title in an amount not to exceed ten percent  
16 (10%) of an eligible entity's qualified economic development  
17 expenditures, subject to limitations, determination, and allocation  
18 by the Oklahoma Department of Commerce.

19           C. The total project tax credit amount may not exceed ten  
20 percent (10%) of the qualified economic development expenditures,  
21 except for qualified initial infrastructure expenditures the project  
22 tax credit amount is earned at the rate of fifty percent (50%) of  
23 qualified initial infrastructure expenditures.

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1 D. 1. The project tax credit amount for qualified economic  
2 development expenditures may not exceed Six Million Dollars  
3 (\$6,000,000.00) per qualifying project.

4 2. The project tax credit amount for qualified initial  
5 infrastructure expenditures may not exceed Three Million Dollars  
6 (\$3,000,000.00) per qualifying project.

7 Projects are eligible to combine qualified economic development  
8 and qualified initial infrastructure expenditures, but the total  
9 project tax credit amount may not exceed Six Million Dollars  
10 (\$6,000,000.00) per qualifying project in aggregate.

11 ~~E. The project tax credit amount that may be claimed or~~  
12 ~~assigned to a qualifying project affiliate in any year may not~~  
13 ~~exceed one-third (1/3) of the project tax credit amount awarded~~  
14 ~~beginning in the year that construction is initiated.~~

15 ~~F.~~ The issuance of the project tax credit amount shall be  
16 subject to review of eligible expenditures and qualifying project  
17 status by the Oklahoma Department of Commerce.

18 ~~G.~~ F. The credits authorized pursuant to this section may not  
19 be used to reduce the tax liability of the taxpayer to less than  
20 zero (0).

21 ~~H.~~ G. The credits allowed pursuant to this section that are not  
22 used may be assigned to a qualifying project affiliate by written  
23 agreement at any time during the tax year in which the credit is  
24 earned or the five (5) years following the tax year the qualified

1 expenditures are incurred. For purposes of this subsection, a  
2 "qualifying project affiliate" shall include a customer, vendor,  
3 project investor, or strategic finance partner of the eligible  
4 entity subject to the Oklahoma corporate or individual income tax.  
5 The eligible taxpayer and the qualifying project affiliate must  
6 jointly file a copy of the written assignment agreement with the  
7 Oklahoma Tax Commission within thirty (30) days of the assignment.  
8 The written agreement must contain the name, address, and taxpayer  
9 identification number of the parties to the assignment, the tax year  
10 the eligible taxpayer incurred the qualified expenditures, the  
11 amount of credit being assigned, and the tax year or years for which  
12 the credit may be claimed.

13 ~~F.~~ H. To the extent not used, the tax credit authorized by this  
14 section may be carried over, in order, to each of the five (5)  
15 subsequent taxable years.

16 ~~J.~~ I. Credits allocated by the Department shall not exceed  
17 Twelve Million Dollars (\$12,000,000.00) in a tax year. Qualifying  
18 projects that have submitted an application and are not allocated  
19 all or part of credit for qualified economic development  
20 expenditures or qualified initial infrastructure expenditures ~~due to~~  
21 ~~the tax year limit~~ shall be eligible for credit in subsequent tax  
22 years.

23 ~~K.~~ J. 1. The Oklahoma Tax Commission may promulgate rules,  
24 forms, and regulations as are necessary to implement and administer

1 the provisions of this section and certify the tax credit amount  
2 generated by each qualifying project annually.

3 2. The Oklahoma Department of Commerce shall promulgate rules  
4 to permit verification of the eligibility of a qualifying project  
5 for the purpose of claiming the credit. The rules shall provide for  
6 the approval of qualified economic development expenditures prior to  
7 commencement of a project and provide a certificate of verification  
8 upon completion of a project that uses qualified economic  
9 development expenditures. The certificate of verification shall  
10 satisfy all requirements of the Oklahoma Tax Commission pertaining  
11 to the eligibility of the eligible taxpayer claiming the credit.

12 SECTION 2. This act shall become effective January 1, 2025.

13 Passed the Senate the 19th day of February, 2024.

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15 \_\_\_\_\_  
16 Presiding Officer of the Senate

17 Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,  
18 2024.

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21 Presiding Officer of the House  
22 of Representatives  
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