

# An Act

ENROLLED SENATE  
BILL NO. 1401

By: Hall of the Senate

and

Wallace of the House

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

SUBJECT: Income tax credit

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

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

Section 2357.105. A. As used in this section:

1. "Eligible entity" means ~~a business~~ an 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;~~

2. "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;

3. "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;

4. "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;

5. "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;

6. "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;

7. "Qualified initial infrastructure expenditures" means expenditures for new rail infrastructure and improvements, which includes the acquisition of right-of-way, engineering, rehabilitation of existing inactive track to reinstate operation, 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; and

8. "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.

B. For tax years beginning after December 31, 2022, and ending not later than December 31, 2027, there shall be allowed a credit against the tax imposed pursuant to Section 2355 of ~~Title 68 of the Oklahoma Statutes~~ this title in an amount not to exceed ten percent

(10%) of an eligible entity's qualified economic development expenditures, subject to limitations, determination, and allocation by the Oklahoma Department of Commerce.

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

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

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

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

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

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

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

~~H.~~ G. The credits allowed pursuant to this section that are not used may be assigned to a qualifying project affiliate by written agreement at any time during the tax year in which the credit is earned or the five (5) years following the tax year the qualified expenditures are incurred. For purposes of this subsection, a "qualifying project affiliate" shall include a customer, vendor,

project investor, or strategic finance partner of the eligible entity subject to the Oklahoma corporate or individual income tax. The eligible taxpayer and the qualifying project affiliate must jointly file a copy of the written assignment agreement with the Oklahoma Tax Commission within thirty (30) days of the assignment. The written agreement must contain the name, address, and taxpayer identification number of the parties to the assignment, the tax year the eligible taxpayer incurred the qualified expenditures, the amount of credit being assigned, and the tax year or years for which the credit may be claimed.

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

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

~~K.~~ J. 1. The Oklahoma Tax Commission may promulgate rules, forms, and regulations as are necessary to implement and administer the provisions of this section and certify the tax credit amount generated by each qualifying project annually.

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

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

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

\_\_\_\_\_  
Presiding Officer of the Senate

Passed the House of Representatives the 22nd day of April, 2024.

\_\_\_\_\_  
Presiding Officer of the House  
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

By: \_\_\_\_\_

Approved by the Governor of the State of Oklahoma this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

By: \_\_\_\_\_