

1 **SENATE FLOOR VERSION**

2 February 12, 2024

3 SENATE BILL NO. 1401

By: Hall

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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 COMMITTEE REPORT BY: COMMITTEE ON FINANCE
14 February 12, 2024 - DO PASS

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