

1 STATE OF OKLAHOMA

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

3 COMMITTEE SUBSTITUTE

4 FOR ENGROSSED

5 SENATE BILL NO. 210

By: Haste, Jett, and Dahm of
the Senate

6 and

7 Hilbert of the House

8
9 COMMITTEE SUBSTITUTE

10 [revenue and taxation - credits - North American
11 Industry Classification System - formula -
12 effective date]

13
14
15
16 ~~BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:~~

17 SECTION 1. AMENDATORY 68 O.S. 2021, Section 2357.4, is
18 amended to read as follows:

19 Section 2357.4 A. Except as otherwise provided in subsection F
20 of Section 3658 of this title and in subsections J and K of this
21 section, for taxable years beginning after December 31, 1987, there
22 shall be allowed a credit against the tax imposed by Section 2355 of
23 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 net increase in the number of full-time-equivalent
10 employees in a manufacturing operation, as defined in Section 1352
11 of this title, which has received a manufacturer exemption permit
12 pursuant to the provisions of Section 1359.2 of this title or a
13 qualified aircraft maintenance or manufacturing facility defined in
14 Section 1357 of this title in this state or in a qualified web
15 search portal as defined in Section 1357 of this title including
16 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 net increase in the number of full-time-equivalent
6 employees in this state engaged in the manufacture of any goods
7 identified by any Industry Number contained in Division D of Part I
8 of the Standard Industrial Classification (SIC) Manual, latest
9 revision, if the total cost of qualified depreciable property placed
10 in service by the business entity within the state equals or exceeds
11 Forty Million Dollars (\$40,000,000.00) within three (3) years from
12 the date of initial qualifying expenditure.

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

19 D. If a business entity fails to expend the amount required by
20 paragraph 1 or paragraph 2 of subsection B of this section within
21 the time required, the business entity may not claim the credit
22 authorized by subsection B of this section but shall be allowed to
23 claim a credit pursuant to subsection A of this section if the
24 requirements of subsection A of this section are met with respect to

1 the investment in qualified depreciable property or net increase in
2 the number of full-time-equivalent employees.

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

24

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

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

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

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

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

10 1. a. Two percent (2%) of the cost of the qualified property
11 in the year the property is placed in service with
12 respect to any taxpayer other than as provided in
13 subparagraph b of this paragraph, or

14 b. For property placed in service on or after the
15 effective date of this act but not later than December
16 31, 2034, by an entity that is primarily engaged in
17 the refining of crude petroleum into refined petroleum
18 classified in the NAICS Manual under Industry No.
19 324110, the credit allowed shall be three percent (3%)
20 of the cost of the qualified property. The total
21 credits which may be claimed pursuant to the
22 provisions of this subparagraph shall not exceed
23 Thirty Million Dollars (\$30,000,000.00) for each
24 taxable year and the limitation on such credits shall

1 be subject to the provisions of subsections N and O of
2 this section; or

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

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

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

12 1. To each of the four (4) years following the year of
13 qualification;

14 2. To the extent not used in those years in order to each of
15 the fifteen (15) years following the initial five-year period;

16 3. If a C corporation that otherwise qualified for the credits
17 under subsection A of this section subsequently changes its
18 operating status to that of a pass-through entity which is being
19 treated as the same entity for federal tax purposes, the credits
20 will continue to be available as if the pass-through entity had
21 originally qualified for the credits subject to the limitations of
22 this section;

23 4. To the extent not used in paragraphs 1 and 2 of this
24 subsection, such credits from qualified depreciable property placed

1 in service on or after January 1, 2000, may be utilized in any
2 subsequent tax years after the initial twenty-year period; and

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

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

24

1 be used to file an amended tax return for any taxable year prior to
2 the taxable year beginning January 1, 2012.

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

9 L. For tax years beginning on or after January 1, 2016, and
10 ending on or before December 31, 2018, the total amount of credits
11 authorized by this section used to offset tax shall be adjusted
12 annually to limit the annual amount of credits to Twenty-five
13 Million Dollars (\$25,000,000.00). The Tax Commission shall annually
14 calculate and publish a percentage by which the credits authorized
15 by this section shall be reduced so the total amount of credits used
16 to offset tax does not exceed Twenty-five Million Dollars
17 (\$25,000,000.00) per year. The formula to be used for the
18 percentage adjustment shall be Twenty-five Million Dollars
19 (\$25,000,000.00) divided by the credits used to offset tax in the
20 second preceding year.

21 M. Pursuant to subsection L of this section, in the event the
22 total tax credits authorized by this section exceed Twenty-five
23 Million Dollars (\$25,000,000.00) in any calendar year, the Tax
24 Commission shall permit any excess over Twenty-five Million Dollars

1 (\$25,000,000.00) but shall factor such excess into the percentage
2 adjustment formula for subsequent years.

3 N. For the tax year immediately following the completion of the
4 first two (2) tax years for which the credit provided by
5 subparagraph b of paragraph 1 of subsection H of this section may be
6 claimed, and each tax year thereafter, the total amount of credits
7 authorized by subparagraph b of paragraph 1 of subsection H of this
8 section used to offset tax shall be adjusted annually to limit the
9 annual amount of credits to Thirty Million Dollars (\$30,000,000.00).
10 The Tax Commission shall annually calculate and publish by the first
11 day of the affected year a percentage by which the credits
12 authorized by this section shall be reduced so the total amount of
13 credits used to offset tax does not exceed Thirty Million Dollars
14 (\$30,000,000.00) per year. The formula to be used for the
15 percentage adjustment shall be Thirty Million Dollars
16 (\$30,000,000.00) divided by the credits claimed in the second
17 preceding year.

18 O. In the event the total tax credits authorized by
19 subparagraph b of paragraph 1 of subsection H of this section exceed
20 Thirty Million Dollars (\$30,000,000.00) in any calendar year, the
21 Tax Commission shall permit any excess over Thirty Million Dollars
22 (\$30,000,000.00) but shall factor such excess into the percentage
23 adjustment formula for subsequent years.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

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

59-1-8227 JM 04/13/23