

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 59th Legislature (2023)

4 COMMITTEE SUBSTITUTE
5 FOR ENGROSSED
6 SENATE BILL NO. 210

By: Haste, Jett, and Dahm of
the Senate

and

Hilbert of the House

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11 COMMITTEE SUBSTITUTE

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

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

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

21 Section 2357.4 A. Except as otherwise provided in subsection F
22 of Section 3658 of this title and in subsections J and K of this
23 section, for taxable years beginning after December 31, 1987, there
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1 shall be allowed a credit against the tax imposed by Section 2355 of
2 this title for:

3 1. Investment in qualified depreciable property placed in
4 service during those years for use in a manufacturing operation, as
5 defined in Section 1352 of this title, which has received a
6 manufacturer exemption permit pursuant to the provisions of Section
7 1359.2 of this title or a qualified aircraft maintenance or
8 manufacturing facility as defined in Section 1357 of this title in
9 this state or a qualified web search portal as defined in Section
10 1357 of this title; or

11 2. A net increase in the number of full-time-equivalent
12 employees in a manufacturing operation, as defined in Section 1352
13 of this title, which has received a manufacturer exemption permit
14 pursuant to the provisions of Section 1359.2 of this title or a
15 qualified aircraft maintenance or manufacturing facility defined in
16 Section 1357 of this title in this state or in a qualified web
17 search portal as defined in Section 1357 of this title including
18 employees engaged in support services.

19 B. Except as otherwise provided in subsection F of Section 3658
20 of this title and in subsections J and K of this section, for
21 taxable years beginning after December 31, 1998, there shall be
22 allowed a credit against the tax imposed by Section 2355 of this
23 title for:

1 1. Investment in qualified depreciable property with a total
2 cost equal to or greater than Forty Million Dollars (\$40,000,000.00)
3 within three (3) years from the date of initial qualifying
4 expenditure and placed in service in this state during those years
5 for use in the manufacture of products described by any Industry
6 Number contained in Division D of Part I of the Standard Industrial
7 Classification (SIC) Manual, latest revision; or

8 2. A net increase in the number of full-time-equivalent
9 employees in this state engaged in the manufacture of any goods
10 identified by any Industry Number contained in Division D of Part I
11 of the Standard Industrial Classification (SIC) Manual, latest
12 revision, if the total cost of qualified depreciable property placed
13 in service by the business entity within the state equals or exceeds
14 Forty Million Dollars (\$40,000,000.00) within three (3) years from
15 the date of initial qualifying expenditure.

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

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

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

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

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

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

1 Thirty Million Dollars (\$30,000,000.00) for each
2 taxable year and the limitation on such credits shall
3 be subject to the provisions of subsections N and O of
4 this section; or

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

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

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

14 1. To each of the four (4) years following the year of
15 qualification;

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

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

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

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

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

1 accrue during the period of July 1, 2010, through June 30, 2012, may
2 be used to file an amended tax return for any taxable year prior to
3 the taxable year beginning January 1, 2012.

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

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

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

1 Commission shall permit any excess over Twenty-five Million Dollars
2 (\$25,000,000.00) but shall factor such excess into the percentage
3 adjustment formula for subsequent years.

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

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

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

COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated
04/13/2023 - DO PASS, As Amended.