

1 ENGROSSED SENATE
2 BILL NO. 1582

By: Jolley, Treat and Mazzei of
the Senate

3 and

4 Sears and Casey of the
5 House

6
7 An Act relating to income tax credits; amending 68
8 O.S. 2011, Section 2357.4, as amended by Section 1,
9 Chapter 336, O.S.L. 2015 (68 O.S. Supp. 2015, Section
10 2357.4), which relates to tax credits for investment
11 in depreciable property or net increase in employees;
12 limiting total amount of certain credit which may be
13 claimed during specified time period; providing for
14 annual adjustment of total amount of credits subject
15 to certain limit based on specified calculation and
16 prescribing applicable methodology; providing
17 exception to certain limit under specified
18 circumstances; and providing an effective date.

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

20 SECTION 1. AMENDATORY 68 O.S. 2011, Section 2357.4, as
21 amended by Section 1, Chapter 336, O.S.L. 2015 (68 O.S. Supp. 2015,
22 Section 2357.4), is amended to read as follows:

23 Section 2357.4. A. Except as otherwise provided in subsection
24 F of Section 3658 of this title and in subsections J and K of this
section, for taxable years beginning after December 31, 1987, there
shall be allowed a credit against the tax imposed by Section 2355 of
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. Two percent (2%) of the cost of the qualified property in
11 the year the property is placed in service; or

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

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

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

21 1. To each of the four (4) years following the year of
22 qualification;

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

1 3. If a C corporation that otherwise qualified for the credits
2 under subsection A of this section subsequently changes its
3 operating status to that of a pass-through entity which is being
4 treated as the same entity for federal tax purposes, the credits
5 will continue to be available as if the pass-through entity had
6 originally qualified for the credits subject to the limitations of
7 this section~~;~~;

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

12 5. Provided, for tax years beginning on or after January 1,
13 2016, and ending on or before December 31, 2018, the amount of
14 credits available as an offset in a taxable year shall be limited to
15 the percentage calculated by the Tax Commission pursuant to the
16 provisions of subsection L of this section.

17 J. No credit otherwise authorized by the provisions of this
18 section may be claimed for any event, transaction, investment,
19 expenditure or other act occurring on or after July 1, 2010, for
20 which the credit would otherwise be allowable until the provisions
21 of this subsection shall cease to be operative on July 1, 2012.
22 Beginning July 1, 2012, the credit authorized by this section may be
23 claimed for any event, transaction, investment, expenditure or other
24 act occurring on or after July 1, 2010, according to the provisions

1 of this section; provided, credits accrued during the period from
2 July 1, 2010, through June 30, 2012, shall be limited to a period of
3 two (2) taxable years. The credit shall be limited in each taxable
4 year to fifty percent (50%) of the total amount of the accrued
5 credit. Any tax credits which accrue during the period of July 1,
6 2010, through June 30, 2012, may not be claimed for any period prior
7 to the taxable year beginning January 1, 2012. No credits which
8 accrue during the period of July 1, 2010, through June 30, 2012, may
9 be used to file an amended tax return for any taxable year prior to
10 the taxable year beginning January 1, 2012.

11 K. Beginning January 1, 2017, except with respect to tax
12 credits allowed from investment or job creation occurring prior to
13 January 1, 2017, the credits authorized by this section shall not be
14 allowed for investment or job creation in electric power generation
15 by means of wind as described by the North American Industry
16 Classification System, No. 221119.

17 L. For tax years beginning on or after January 1, 2016, and
18 ending on or before December 31, 2018, the total amount of credits
19 authorized by this section used to offset tax shall be adjusted
20 annually to limit the annual amount of credits to Twenty-five
21 Million Dollars (\$25,000,000.00). The Tax Commission shall annually
22 calculate and publish a percentage by which the credits authorized
23 by this section shall be reduced so the total amount of credits used
24 to offset tax does not exceed Twenty-five Million Dollars

1 (\$25,000,000.00) per year. The formula to be used for the
2 percentage adjustment shall be Twenty-five Million Dollars
3 (\$25,000,000.00) divided by the credits used to offset tax in the
4 second preceding year.

5 M. Pursuant to subsection L of this section, in the event the
6 total tax credits authorized by this section exceed Twenty-five
7 Million Dollars (\$25,000,000.00) in any calendar year, the Tax
8 Commission shall permit any excess over Twenty-five Million Dollars
9 (\$25,000,000.00) but shall factor such excess into the percentage
10 adjustment formula for subsequent years.

11 SECTION 2. This act shall become effective November 1, 2016.

12 Passed the Senate the 16th day of May, 2016.

13
14 _____
15 Presiding Officer of the Senate

16 Passed the House of Representatives the ____ day of _____,
17 2016.

18
19 _____
20 Presiding Officer of the House
21 of Representatives