

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 SENATE BILL 556

By: Newhouse

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5  
6 AS INTRODUCED

7 An Act relating to tax credits; amending 68 O.S.  
8 2011, Section 2357.41, which relates to credits for  
9 qualified rehabilitation expenditures; providing  
10 exception; limiting credits through application of  
11 annual total cap; prescribing method and procedures  
12 for application of cap and adjustment of percentage  
13 credit by Oklahoma Tax Commission; and providing an  
14 effective date.

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

16 SECTION 1. AMENDATORY 68 O.S. 2011, Section 2357.41, is  
17 amended to read as follows:

18 Section 2357.41. A. Except as otherwise provided by subsection  
19 I of this section, for tax years beginning after December 31, 2000,  
20 there shall be allowed a credit against the tax imposed by Sections  
21 2355 and 2370 of this title or that portion of the tax imposed by  
22 Section 624 or 628 of Title 36 of the Oklahoma Statutes that would  
23 otherwise have been apportioned to the General Revenue Fund for  
24 qualified rehabilitation expenditures incurred in connection with  
any certified historic hotel or historic newspaper plant building  
located in an increment or incentive district created pursuant to

1 the Local Development Act or for qualified rehabilitation  
2 expenditures incurred after January 1, 2006, in connection with any  
3 certified historic structure.

4 B. The Except as otherwise provided in subsections J and K of  
5 this section, the amount of the credit shall be one hundred percent  
6 (100%) of the federal rehabilitation credit provided for in Section  
7 47 of Title 26 of the United States Code. The credit authorized by  
8 this section may be claimed at any time after the relevant local  
9 governmental body responsible for doing so issues a certificate of  
10 occupancy or other document that is a precondition for the  
11 applicable use of the building or structure that is the basis upon  
12 which the credit authorized by this section is claimed.

13 C. All requirements with respect to qualification for the  
14 credit authorized by Section 47 of Title 26 of the United States  
15 Code shall be applicable to the credit authorized by this section.

16 D. If the credit allowed pursuant to this section exceeds the  
17 amount of income taxes due or if there are no state income taxes due  
18 on the income of the taxpayer, the amount of the credit allowed but  
19 not used in any taxable year may be carried forward as a credit  
20 against subsequent income tax liability for a period not exceeding  
21 ten (10) years following the qualified expenditures.

22 E. All rehabilitation work to which the credit may be applied  
23 shall be reviewed by the State Historic Preservation Office which  
24 will in turn forward the information to the National Park Service

1 for certification in accordance with 36 C.F.R., Part 67. A  
2 certified historic structure may be rehabilitated for any lawful use  
3 or uses, including without limitation mixed uses and still retain  
4 eligibility for the credit provided for in this section.

5 F. The amount of the credit allowed for any credit claimed for  
6 a certified historic hotel or historic newspaper plant building or  
7 any certified historic structure, but not used, shall be freely  
8 transferable, in whole or in part, to subsequent transferees at any  
9 time during the five (5) years following the year of qualification.  
10 Any person to whom or to which a tax credit is transferred shall  
11 have only such rights to claim and use the credit under the terms  
12 that would have applied to the entity by whom or by which the tax  
13 credit was transferred. The provisions of this subsection shall not  
14 limit the ability of a tax credit transferee to reduce the tax  
15 liability of the transferee regardless of the actual tax liability  
16 of the tax credit transferor for the relevant taxable period. The  
17 transferor of the credit and the transferee shall jointly file a  
18 copy of the written credit transfer agreement with the Oklahoma Tax  
19 Commission within thirty (30) days of the transfer. Such filing of  
20 the written credit transfer agreement with the Oklahoma Tax  
21 Commission shall perfect such transfer. The written agreement shall  
22 contain the name, address and taxpayer identification number of the  
23 parties to the transfer, the amount of credit being transferred, the  
24 year the credit was originally allowed to the transferor, the tax

1 year or years for which the credit may be claimed, and a  
2 representation by the transferor that the transferor has neither  
3 claimed for its own behalf nor conveyed such credits to any other  
4 transferee. The Tax Commission shall develop a standard form for  
5 use by subsequent transferees of the credit demonstrating  
6 eligibility for the transferee to reduce its applicable tax  
7 liabilities resulting from ownership of the credit. The Tax  
8 Commission shall develop a system to record and track the transfers  
9 of the credit and certify the ownership of the credit and may  
10 promulgate rules to permit verification of the validity and  
11 timeliness of a tax credit claimed upon a tax return pursuant to  
12 this subsection but shall not promulgate any rules which unduly  
13 restrict or hinder the transfers of such tax credit.

14 G. Notwithstanding any other provisions in this section, on or  
15 after January 1, 2009, if a credit allowed pursuant to this section  
16 which has been transferred is subsequently reduced as the result of  
17 an adjustment by the Internal Revenue Service, Tax Commission, or  
18 any other applicable government agency, only the transferor  
19 originally allowed the credit and not any subsequent transferee of  
20 the credit, shall be held liable to repay any amount of disallowed  
21 credit.

22 H. As used in this section:

23 1. "Certified historic hotel or historic newspaper plant  
24 building" means a hotel or newspaper plant building that is listed

1 on the National Register of Historic Places within thirty (30)  
2 months of taking the credit pursuant to this section-;

3 2. "Certified historic structure" means a building that is  
4 listed on the National Register of Historic Places within thirty  
5 (30) months of taking the credit pursuant to this section or a  
6 building located in Oklahoma which is certified by the State  
7 Historic Preservation Office as contributing to the historic  
8 significance of a certified historic district listed on the National  
9 Register of Historic Places, or a local district that has been  
10 certified by the State Historic Preservation Office as eligible for  
11 listing in the National Register of Historic Places; and

12 3. "Qualified rehabilitation expenditures" means capital  
13 expenditures that qualify for the federal rehabilitation credit  
14 provided in Section 47 of Title 26 of the United States Code and  
15 that were paid after December 31, 2000. Qualified rehabilitation  
16 expenditures do not include capital expenditures for nonhistoric  
17 additions except an addition that is required by state or federal  
18 regulations that relate to safety or accessibility. In addition,  
19 qualified rehabilitation expenditures do not include expenditures  
20 related to the cost of acquisition of the property.

21 I. No credit otherwise authorized by the provisions of this  
22 section may be claimed for any event, transaction, investment,  
23 expenditure or other act occurring on or after July 1, 2010, for  
24 which the credit would otherwise be allowable until the provisions

1 of this subsection shall cease to be operative on July 1, 2012.  
2 Beginning July 1, 2012, the credit authorized by this section may be  
3 claimed for any event, transaction, investment, expenditure or other  
4 act occurring on or after July 1, 2010, according to the provisions  
5 of this section. Any tax credits which accrue during the period of  
6 July 1, 2010, through June 30, 2012, may not be claimed for any  
7 period prior to the taxable year beginning January 1, 2012. No  
8 credits which accrue during the period of July 1, 2010, through June  
9 30, 2012, may be used to file an amended tax return for any taxable  
10 year prior to the taxable year beginning January 1, 2012.

11 J. For tax years beginning on or after January 1, 2018, the  
12 amount of credit available as an offset in a taxable year shall be  
13 capped at Five Million Dollars (\$5,000,000.00) annually and the  
14 percentage by which credits shall be reduced shall be determined  
15 pursuant to subsection K of this section.

16 K. In order to determine the total amount of credits authorized  
17 by this section which may be available to offset tax in a taxable  
18 year, subject to the cap determined pursuant to subsection J of this  
19 section, the Tax Commission shall annually calculate and publish a  
20 percentage by which the credits authorized by this section shall be  
21 reduced so the total amount of credits used to offset tax does not  
22 exceed the annual cap. The formula to be used for the percentage  
23 adjustment shall be the applicable cap amount divided by the credits  
24 used to offset tax in the second preceding year. In the event the

1 total tax credits authorized by this section exceed the applicable  
2 cap in any calendar year, the Tax Commission shall permit any excess  
3 but shall factor such excess into the percentage adjustment formula  
4 for subsequent years.

5 SECTION 2. This act shall become effective November 1, 2017.

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